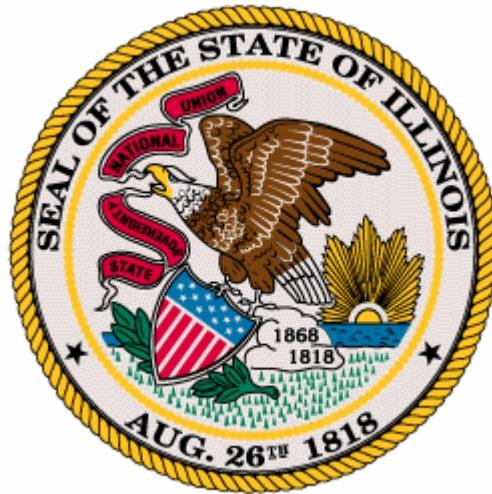


2004 CASE REPORT

**(and cumulative report of Illinois
statutes held unconstitutional)**



**Legislative Reference Bureau
112 State Capitol
Springfield, Illinois 62706
(217) 782-6625**

December 2004

**JOINT COMMITTEE ON LEGISLATIVE
SUPPORT SERVICES**

EMIL JONES, JR., President of the Senate, Chair
FRANK C. WATSON, Senate Minority Leader
MICHAEL J. MADIGAN, Speaker of the House
TOM CROSS, House Minority Leader

LEGISLATIVE REFERENCE BUREAU BOARD

SENATOR DAN CRONIN
SENATOR KIRK W. DILLARD
SENATOR ADELINE JAY GEO-KARIS
SENATOR WILLIAM HAINE
SENATOR MATTIE HUNTER
SENATOR LARRY WALSH
REPRESENTATIVE RANDY HULTGREN
REPRESENTATIVE SID MATHIAS
REPRESENTATIVE CHAPIN ROSE

LEGISLATIVE REFERENCE BUREAU STAFF

RICHARD C. EDWARDS, Executive Director

Staff Attorneys:

Lee Black
Robert Cohen
Andrea Creek
Brian Day
Rosalee Dodson
David Heckelman
Wayne Hedenschoug

David Johnson
Jean McCay
Megan Moore
Randy Paswater
Rosalind Sargent
Lori Theilen
Nicole Truong



State of Illinois
LEGISLATIVE REFERENCE BUREAU
112 State House, Springfield, IL 62706-1300
Phone: 217/782-6625

December 2004

To the Honorable Members of the General Assembly:

This is the Legislative Reference Bureau's annual review of decisions of the Federal Courts, the Illinois Supreme Court, and the Illinois Appellate Court as required by Section 5.05 of the Legislative Reference Bureau Act, 25 ILCS 135/5.05.

The Bureau's staff attorneys screened all court decisions and prepared the individual case summaries. A cumulative report of statutes held unconstitutional, prepared by the Bureau's staff attorneys, is included. The entire report was edited and compiled by staff attorney Jean McCay.

Respectfully submitted,

Richard C. Edwards
Executive Director

TABLE OF CONTENTS

Introduction to Part 1	1
Part 1: Summaries of Recent Court Decisions	2
Illinois Identification Card Act The penalty for knowingly possessing a fraudulent identification card is unconstitutionally disproportionate to the penalty for such possession with aggravating elements. <i>People v. Pizano</i>	2
Personnel Code The Code does not grant to a State employee a private right of action for alleged retaliatory disciplinary action after the employee reported Department of State Police attendance abuses. <i>Metzger v. DaRosa</i>	2
Compensation Review Act Denial of fiscal year 2003 cost-of-living adjustment to salaries of State judges violates the Illinois Constitution's separation of powers clause and prohibition against decreasing a judge's salary during his or her term. <i>Jorgensen v. Blagojevich</i>	3
Illinois State Auditing Act The Auditor General lacks constitutional authority to audit airports that do not receive funds appropriated by the General Assembly. <i>City of Chicago v. Holland</i>	4
Illinois Insurance Code The requirement that the amount of underinsured motorist coverage must be equal to that of uninsured motorist coverage implicitly subjects rejection of underinsured motorist coverage to the same procedures as rejection of uninsured motorist coverage. <i>Lee v. John Deere Insurance Company</i>	4
Public Utilities Act Regulation of unbundled telecommunications network element rates is preempted by the federal Telecommunications Act of 1996. <i>AT&T Communications of Illinois, Inc. v. Illinois Bell Telephone Co.</i>	5
Elder Abuse and Neglect Act The Act implies a private right of action for the employee of an elder services provider agency who is discharged in retaliation for cooperating in an investigation into a fellow employee's suspected elder abuse and financial exploitation. <i>King v. Senior Services Associates, Inc.</i>	6
Environmental Protection Act Exemption from the waste-disposal operation permit requirement for the on-site disposal of wastes created by a person's own activities does not apply to a cement company with wastes in an amount that could not be disposed of without significant environmental harm. <i>Madigan v. Dixon-Marquette Cement, Inc.</i>	6

Illinois Aeronautics Act Land acquisition is an “alteration or extension” of an existing airport that requires certification of approval by the Department of Transportation. <i>Philip v. Daley</i>	7
Illinois Vehicle Code The Section establishing a 90-day deadline to file a petition to rescind the statutory summary suspension of a driver’s license is ambiguous as to the deadline for refilling after the petition is voluntarily dismissed. <i>People v. Rodriguez</i>	8
Juvenile Court Act of 1987 A trial court may schedule a dispositional hearing without first entering a written order setting forth the factual basis supporting the court’s determination of neglect, abuse, or dependency at the conclusion of the adjudicatory hearing. <i>In re Timothy T.</i>	9
Juvenile Court Act of 1987 The State cannot move for designation of a proceeding as an extended jurisdiction juvenile prosecution after unsuccessfully moving to transfer jurisdiction of the proceeding for prosecution under the criminal laws of Illinois. <i>In re Christopher K.</i>	9
Criminal Code of 1961 The 15-year sentence enhancement for aggravated kidnapping while armed with a firearm violates the proportionate penalties clause of the Illinois Constitution. <i>People v. Baker</i>	10
Criminal Code of 1961 Mandatory sentence enhancements for aggravated kidnapping, armed robbery, and aggravated vehicular hijacking, based on commission while armed with a firearm, are unconstitutionally disproportionate penalties. <i>People v. Moss</i>	10
Criminal Code of 1961 The statutory presumption that a person who conceals and removes merchandise from a retail store without paying for it does so intentionally is an unconstitutional mandatory presumption. <i>People v. Taylor</i>	11
Criminal Code of 1961 The State may seize a vehicle used in the commission of felony DUI, even though the vehicle’s owner was acquitted of that felony. <i>People v. 1995 Ford Van</i>	11
Illinois Credit Card and Debit Card Act The provision that possession of 2 or more counterfeit credit or debit cards is prima facie evidence of intent to defraud or of knowledge that the cards are counterfeit is an unconstitutional mandatory presumption. <i>People v. Miles</i>	12
Code of Criminal Procedure of 1963 A defendant’s appearance by closed-circuit television at a guilty plea hearing violates his constitutional right to be physically present unless the defendant consents in writing. <i>People v. Stroud</i>	13

Sexually Dangerous Persons Act The Act must be read to incorporate the Sexually Violent Persons Commitment Act's definition of mental disorder and standard of propensity to commit sexual offenses. <i>People v. Masterson</i>	13
Unified Code of Corrections The Governor possesses broad powers to grant reprieves, pardons, and commutations, which cannot be regulated by the judiciary or legislature. <i>People ex rel. Madigan v. Snyder</i>	14
Code of Civil Procedure The requirement that the notice of appraisal be delivered to an owner whose home is subject to a sheriff's sale connotes personal service. <i>Northwest Diversified, Inc. v. Mauer</i>	14
Code of Civil Procedure The Code's requirement of notice by publication of a petition to change a name is unconstitutional to the extent it permits a custodial parent to change a child's surname without actual notice to the noncustodial parent. <i>In re Petition of Sanjuan-Moeller</i>	15
Mental Health and Developmental Disabilities Confidentiality Act A pharmacy is an "agency" for purposes of the nondisclosure of its pharmaceutical records of a recipient of mental health or developmental disabilities services. <i>In re Marriage of Peters-Farrell</i>	15
Local Governmental and Governmental Employees Tort Immunity Act The General Assembly should consider the issue of blanket immunity from liability for police pursuits. <i>Suwanski v. Village of Lombard</i>	16
Equine Activity Liability Act The Act is unclear as to the scope of immunity from liability due to obvious drafting errors. <i>Kush v. Wentworth</i>	16
Uniform Interstate Family Support Act When all relevant parties reside outside Illinois, an Illinois court's continuing, exclusive jurisdiction over its child support order extends to modification, not enforcement, of the order. <i>Zaabel v. Konetski</i>	17
Adoption Act When determining parental unfitness after an adjudication of child abuse or neglect, the parent's efforts toward correcting conditions that led to the adjudication and the parent's progress toward return of the child must both be evaluated in the 9 months following the adjudication. <i>In re D.F.</i>	18
Consumer Fraud and Deceptive Business Practices Act Provisions treating new and used vehicle dealers differently from other consumer fraud defendants are unconstitutional special legislation. <i>Allen v. Woodfield Chevrolet, Inc.</i>	19

Beer Industry Fair Dealing Act The Act's prohibition against mandatory arbitration clauses in contracts between brewers and distributors violates federal law. <i>Stawski Distributing Co., Inc. v. Browary Zywiec S.A.</i>	20
Employment of Strikebreakers Act The Act, which criminalizes an employer's hiring of temporary workers during a strike, is preempted by federal law, which permits that hiring. <i>Caterpillar Inc. v. Lyons</i>	20
Introduction to Part 2	22
Part 2: Statutes Held Unconstitutional (No Legislative Response)	23
Introduction to Part 3	58
Part 3: Statutes Held Unconstitutional (Legislative Response)	59
Case Index	97
Act Index	110
Statute and Constitutional Provision Index	113

INTRODUCTION TO PART 1

Part 1 of this 2004 Case Report contains summaries of recent court decisions and is based on a review of court decisions published since the summer of 2002 in advance sheets through the following:

1. Illinois Official Reports advance sheet No. 15 (July 21, 2004).
2. Federal Reporter advance sheet No. 31 (August 2, 2004).
3. Federal Supplement advance sheet No. 31 (August 2, 2004).
4. Supreme Court Reporter advance sheet No. 18 (July 15, 2004).

PART 1

SUMMARIES OF RECENT COURT DECISIONS

ILLINOIS IDENTIFICATION CARD ACT – DISPROPORTIONATE PENALTIES

The penalty for knowingly possessing a fraudulent identification card is unconstitutionally disproportionate to the penalty for such possession with aggravating elements.

In *People v. Pizano*, 347 Ill. App. 3d 128 (1st Dist. 2004), the defendant was convicted of knowingly possessing a fraudulent identification card and sentenced in accordance with the Illinois Identification Card Act. Under Section 14B of the Act (15 ILCS 335/14B (West 1998)), knowing possession of a fraudulent identification card is a Class 4 felony with a mandatory minimum fine of \$500 or 50 hours of community service; the penalty for knowing possession of a fraudulent identification card with certain aggravating elements is punishable as a Class 4 felony with no mandatory minimum fine or community service. The court held that the sentencing provision for the offense of knowing possession of a fraudulent identification card violates the proportionate penalties requirement of Section 11 of Article I of the Illinois Constitution (ILCON Art. I, Sec. 11) because it imposes a more serious penalty for mere knowing possession than it imposes for more serious offenses involving knowing possession with aggravating factors.

PERSONNEL CODE – RETALIATION AGAINST WHISTLEBLOWERS

The Code does not grant to a State employee a private right of action for alleged retaliatory disciplinary action after the employee reported Department of State Police attendance abuses.

In *Metzger v. DaRosa*, 209 Ill. 2d 30 (2004), a jury found in favor of a State Police employee who was transferred to another division after reporting attendance abuses. The employee alleged that the transfer violated Section 19c.1 of the Personnel Code (20 ILCS 415/19c.1 (West 2002)). The State argued that there is no implied right of action under Section 19c.1. Section 19c.1 provides that no disciplinary action shall be taken against any employee for disclosure of any alleged prohibited activity under investigation or for any related activity and that disciplinary action means

any retaliatory action taken against an employee, including reprimand, suspension, discharge, demotion, denial of promotion, or transfer. The court held that the Personnel Code, as a whole, was primarily designed to benefit the State and the people of Illinois by ensuring competent employees for government bodies. Although Section 19c.1 incidentally protects State employees from retaliatory action, it does so to further the Code's central purpose of advancing the interest of the State and the public. The Code also expressly provides comprehensive sanctions and remedies for violations of its provisions that sufficiently preclude the necessity of a private right of action for State employees.

COMPENSATION REVIEW ACT - JUDICIAL SALARIES

Denial of fiscal year 2003 cost-of-living adjustment to salaries of State judges violates the Illinois Constitution's separation of powers clause and prohibition against decreasing a judge's salary during his or her term.

In *Jorgensen v. Blagojevich*, 211 Ill. 2d 286 (2004), a State circuit judge challenged the constitutionality, with regard to judges, of Section 5.5 of the Compensation Review Act (25 ILCS 120/5.5 (West 2002)), which prohibits judges and other State officials from receiving salary increases for fiscal year 2003 on the basis of a cost-of-living adjustment (COLA). The judge also challenged the Governor's attempt to block implementation of a COLA for the State's judges for fiscal year 2004. The Governor had used his reduction veto powers to reduce, by an amount slightly greater than the amount of the COLA, the appropriation for judges' salaries for that fiscal year. The Illinois Supreme Court held that Section 5.5 of the Act and the Governor's action regarding the fiscal year 2004 COLA violate Section 14 of Article VI of the Illinois Constitution (ILCON Art. VI, Sec. 14). That Section provides that a judge's salary shall not be reduced during his or her term of office. Sections 3 through 3.3 of the Salaries Act (5 ILCS 290/3 through 290/3.3 (West 2002)), in addition to establishing judicial salaries for fiscal years 1983 and 1984, provide that judicial salaries in succeeding fiscal years shall be in the fiscal year 1984 amounts or in the amounts set by the Compensation Review Board, whichever is greater. Section 5 of the Compensation Review Act (25 ILCS 120/5 (West 2002)) provides that the General Assembly may disapprove the annual increases set by the Compensation Review Board. The court held that the COLAs had become "a fully vested component of judicial salaries" in 1990, when the General Assembly approved the portions of the Compensation Review Board report for fiscal year 1991 that established annual COLAs for judges. Therefore,

withdrawal of the COLAs for fiscal years 2003 and 2004 violates the constitutional prohibition of Section 14 of Article VI. Section 5.5 of the Compensation Review Act and the Governor's action regarding the fiscal year 2004 COLA also violate Section 1 of Article II of the Illinois Constitution (ILCON Art. II, Sec. 1), which provides that the legislative, executive, and judicial branches of State government are separate and that no branch may exercise the powers of another. Section 5.5 of the Compensation Review Act and the Governor's action violate the separation of powers provision by preventing the Illinois Supreme Court from performing its constitutional responsibility to pay judicial salaries provided by law.

ILLINOIS STATE AUDITING ACT – AIRPORT FUNDS

The Auditor General lacks constitutional authority to audit airports that do not receive funds appropriated by the General Assembly.

In *City of Chicago v. Holland*, 206 Ill. 2d 480 (2003), the city of Chicago challenged the constitutionality of Section 3-1 of the Illinois State Auditing Act (30 ILCS 5/3-1 (West 2000)), which requires the Auditor General to perform compliance and management audits of various airports in the city. The Illinois Supreme Court held that the Auditor General does not have the constitutional authority to perform an audit of the particular airports in question. Subsection (b) of Section 3 of Article VIII of the Illinois Constitution (ILCON Art. VIII, Sec. 3) provides that the Auditor General shall “conduct the audit of public funds of the State”. Because the funds of these airports were derived from user fees and federal grants and not from appropriations from the General Assembly, those funds were not “funds of the State”, and the Auditor General does not have the constitutional authority to audit those funds. The dissenting judges argue that the majority's definition of “funds of the State” was too narrow.

ILLINOIS INSURANCE CODE – UNDERINSURED MOTORIST COVERAGE

The requirement that the amount of underinsured motorist coverage must be equal to that of uninsured motorist coverage implicitly subjects rejection of underinsured motorist coverage to the same procedures as rejection of uninsured motorist coverage.

In *Lee v. John Deere Insurance Company*, 208 Ill. 2d 38 (2003), the plaintiff argued that the application and signature requirements for uninsured

motorist coverage contained in subsection (2) of Section 143a-2 of the Illinois Insurance Code (215 ILCS 5/143a-2 (West 1992)) also apply to underinsured motorist coverage and that the insured's rejection of coverage in addition to the minimum required by the Illinois Vehicle Code (625 ILCS 5/7-203) was ineffective. Subsection (1) of Section 143a-2 of the Illinois Insurance Code provides that, unless specifically rejected by the insured, the insurer must provide uninsured motorist coverage in an amount equal to the bodily injury coverage. Subsection (2) of Section 143a-2 requires a space for indicating the rejection of the additional coverage on every application for motor vehicle coverage and requires that the rejection be signed or initialed by the applicant. Subsection (4) of that Section defines underinsured motorist coverage and requires that underinsured coverage be in an amount equal to uninsured coverage. The court held that the application and signature requirements for uninsured motorist coverage contained in subsection (2) of Section 143a-2 also apply to underinsured motorist coverage. The underinsured motorist coverage would be equal to the bodily injury limit if the rejection were ineffective, because that is what the uninsured coverage would be under subsection (1) of Section 143a-2.

Note: Public Act 93-762, effective July 16, 2004, amended Section 143a-2 of the Illinois Insurance Code by changing the procedure for rejecting additional uninsured motorist coverage under subsection (2). Public Act 93-762 does not address the procedure for rejecting additional underinsured motorist coverage.

PUBLIC UTILITIES ACT – REGULATION OF TELECOMMUNICATIONS RATES

Regulation of unbundled telecommunications network element rates is preempted by the federal Telecommunications Act of 1996.

In *AT&T Communications of Illinois, Inc. v. Illinois Bell Telephone Co.*, 349 F. 3d 402 (7th Cir. 2003), the plaintiffs argued that Sections 13-408 and 13-409 of the Public Utilities Act (220 ILCS 5/13-408 and 5/13-409) are preempted by the federal Telecommunications Act of 1996 regarding unbundled network element rates. The court held that Sections 13-408 and 13-409 are preempted by the federal Telecommunications Act of 1996 because those Sections, as implemented by the Illinois Commerce Commission, adjust the rate only by changing fill factors (the proportion of a facility or element that will be filled with network usage) and depreciation rates. That approach conflicts with the federal Telecommunications Act of 1996 and the Federal Communications Commission's total element long-run

incremental cost methodology, which is to set prices based on the long-run costs that would be incurred to produce the services in question using the most efficient telecommunications technology now available and the most efficient network configuration.

ELDER ABUSE AND NEGLECT ACT - RETALIATORY DISCHARGE

The Act implies a private right of action for the employee of an elder services provider agency who is discharged in retaliation for cooperating in an investigation into a fellow employee's suspected elder abuse and financial exploitation.

In *King v. Senior Services Associates, Inc.*, 341 Ill. App. 3d 264 (2nd Dist. 2003), an employee of an elder services provider agency alleged that she was discharged from her employment in retaliation for her cooperation in an investigation of alleged criminal acts of elder abuse and financial exploitation committed by a fellow employee. Section 4.1 of the Elder Abuse and Neglect Act (320 ILCS 20/4.1 (West 2000)) prohibits an employer from discharging an employee who is or will be a witness or who testifies or will testify in any investigation or proceeding concerning a report of suspected elder abuse, neglect, or financial exploitation. The court concluded from the statutory scheme that a private right of action for retaliatory discharge is implied for employees of elder services provider agencies. Without a mechanism for enforcing an employee's statutory right to freedom from employer discrimination, that right is no right at all.

ENVIRONMENTAL PROTECTION ACT – PERMIT EXEMPTION

Exemption from the waste-disposal operation permit requirement for the on-site disposal of wastes created by a person's own activities does not apply to a cement company with wastes in an amount that could not be disposed of without significant environmental harm.

In *Madigan v. Dixon-Marquette Cement, Inc.*, 343 Ill. App. 3d 163 (2nd Dist. 2003), the State disputed whether a cement production company was required to obtain a permit from the Illinois Environmental Protection Agency to conduct a waste-disposal operation. The company argued that the plain language of subsection (d)(1) of Section 21 of the Environmental Protection Act (415 ILCS 5/21 (West 2000)) exempted the company from the permit requirement. That subsection provides, in part, that no person shall conduct any waste-disposal operation without a permit; however, no

permit shall be required for any person conducting a waste-disposal operation for wastes, generated by that person's own activities, which are stored, treated, or disposed of within the site where the wastes are generated. The court found that the intent of subsection (d)(1) of Section 21 was not to create a legislative loophole or gap in the permit system by imposing a literal interpretation, but to provide an exemption for on-site facilities that generate minor amounts of waste that can be disposed of without a significant threat of environmental harm. The amount of cement kiln by-product at issue covered 30 acres, extended 70 feet into the air, and was not considered a minor amount of waste that could be disposed of without a significant threat of environmental harm. The court also recognized the legislature's grant of quasi-legislative authority to the Pollution Control Board to determine, define, and implement environmental control standards regarding waste management and found it logical and appropriate to consider the Board's quasi-legislative determinations and definitions in determining the scope of the permit exemption.

ILLINOIS AERONAUTICS ACT - AIRPORT LAND ACQUISITION

Land acquisition is an "alteration or extension" of an existing airport that requires certification of approval by the Department of Transportation.

In *Philip v. Daley*, 339 Ill. App. 3d 274 (2nd Dist. 2003), the mayor of Chicago and other defendants sought a ruling that Section 47 of the Illinois Aeronautics Act (620 ILCS 5/47 (West 2000)) allowed them to acquire land for the expansion of O'Hare International Airport without first obtaining the approval of the Illinois Department of Transportation (IDOT). Section 47 makes it unlawful for a political subdivision or any of its officers or employees to "make any alteration or extension" of an existing airport without a certificate of approval from IDOT. In a prior case concerning proposed improvements at the airport, *People ex rel. Birkett v. City of Chicago*, 202 Ill. 2d 36 (2002), the Illinois Supreme Court had found the quoted phrase ambiguous because a strict construction of the phrase would lead to the "absurd result" of requiring IDOT approval for the installation of an improvement such as a drinking fountain. The court in *Birkett* therefore accepted IDOT's interpretation of "alteration or extension" as meaning any improvement that materially alters the length, width, or direction of a runway or that extends above an approach slope, transition slope, or turning zone. The defendants in the present case argued that the appellate court should also follow IDOT's interpretation and hold that a certificate of approval was not required for land acquisition. But the court held that

"alteration or extension" is not ambiguous with regard to land acquisition, and the plain language of Section 47 requires certification before any land is acquired.

ILLINOIS VEHICLE CODE - RESCISSION OF STATUTORY SUMMARY SUSPENSION

The Section establishing a 90-day deadline to file a petition to rescind the statutory summary suspension of a driver's license is ambiguous as to the deadline for refiling after the petition is voluntarily dismissed.

In *People v. Rodriguez*, 339 Ill. App. 3d 677 (2nd Dist. 2003), the defendant's driver's license was summarily suspended for refusing to submit to chemical testing for alcohol, drugs, or intoxicating compounds. The defendant timely filed a petition to rescind the suspension under Section 2-118.1 of the Illinois Vehicle Code (625 ILCS 5/2-118.1 (West 2000)) but voluntarily dismissed it before a hearing was held. The defendant refiled his petition more than 90 days after receiving notice of the suspension. The State argued that the petition was untimely because subsection (b) of Section 2-118.1 provides that within 90 days after receiving written notice of statutory summary suspension under Section 11-501.1 of the Code (625 ILCS 5/11-501.1), a person may request a hearing to challenge the suspension. Section 2-118.1 does not indicate whether or not a petition may be refiled, but subsection (b) of that Section further provides: "hearings shall proceed in the court in the same manner as in other civil proceedings". Section 13-217 of the Code of Civil Procedure (735 ILCS 5/13-217) allows a party to refile an action within one year after voluntarily dismissing it; but both the trial and appellate courts rejected the defendant's argument that the one-year refiling deadline applied to petitions under Section 2-118.1. Section 2-118.1 was found ambiguous, being subject to reasonable interpretation as either prohibiting or allowing a defendant to refile a petition more than 90 days after receiving notice of the suspension. The court said the requirement that a hearing under Section 2-118.1 be held within 30 days after the filing of a petition, as well as the legislative history of the provision, indicated that the General Assembly intended to expedite the proceedings. Therefore Section 2-118.1 bars the refiling of a petition after the 90-day deadline has expired. One justice dissented, arguing that the plain language of Sections 2-118.1 and 13-217 allows the defendant to refile the petition within one year of voluntary dismissal.

JUVENILE COURT ACT OF 1987 - DISPOSITIONAL HEARING

A trial court may schedule a dispositional hearing without first entering a written order setting forth the factual basis supporting the court's determination of neglect, abuse, or dependency at the conclusion of the adjudicatory hearing.

In *In re Timothy T.*, 343 Ill. App. 3d 1260 (4th Dist. 2003), the respondent argued that the trial court erred by conducting a dispositional hearing without first entering a written adjudicatory order setting forth the factual basis for finding that the respondent's 2 children were neglected within the meaning of the Juvenile Court Act of 1987. The appellate court held that Section 2-21 of the Act (705 ILCS 405/2-21 (West 2002)) does not require the trial court to enter such a written adjudicatory order at the conclusion of the adjudicatory hearing before scheduling the dispositional hearing. In enacting the amendatory changes made to Section 2-21 by Public Act 88-614, effective September 7, 1994, (providing that a trial court must put in writing the factual basis supporting the court's determination of neglect, abuse, or dependency), the General Assembly did not intend to alter the overarching goal of that Section, which is that the judicial process be accelerated when decisions regarding the custody of children are at issue.

JUVENILE COURT ACT OF 1987 - EXTENDED JURISDICTION JUVENILE PROSECUTION

The State cannot move for designation of a proceeding as an extended jurisdiction juvenile prosecution after unsuccessfully moving to transfer jurisdiction of the proceeding for prosecution under the criminal laws of Illinois.

In *In re Christopher K.*, 348 Ill. App. 3d 130 (1st Dist. 2004), the State unsuccessfully moved to allow prosecution of the minor defendant, who was charged with first degree murder, under the criminal laws of Illinois under Section 5-805 of the Juvenile Court Act of 1987 (705 ILCS 5/5-805 (West 1998)). The State next sought designation of the proceeding as an extended jurisdiction juvenile (EJJ) prosecution under Section 5-810 of the Act (705 ILCS 405/5-810 (West 1998)). The defendant minor argued that the State could not make the second motion. The court held that the legislature intended that motions for EJJ prosecution and for transfer of jurisdiction for prosecution as an adult be filed simultaneously, as alternative requests. After the State's motion to transfer jurisdiction was denied on appeal, the State could not come back and move for EJJ prosecution. Under a motion to transfer jurisdiction, the court must consider 8 factors; under a motion for

EJJ prosecution, the court must consider only 6 of those factors. To allow the State to make a second attempt under a lesser burden would lead to an unjust result.

CRIMINAL CODE OF 1961 - AGGRAVATED KIDNAPPING

The 15-year sentence enhancement for aggravated kidnapping while armed with a firearm violates the proportionate penalties clause of the Illinois Constitution.

In *People v. Baker*, 341 Ill. App. 3d 1083 (4th Dist. 2003), the defendant was convicted of aggravated kidnapping in that he committed the offense of kidnapping while armed with a firearm. The trial court sentenced the defendant to 40 years in prison for aggravated kidnapping, which included an automatic 15-year enhancement for being armed with a firearm under subsection (b) of Section 10-2 of the Criminal Code of 1961 (720 ILCS 5/10-2 (West 2000)). The defendant argued that the 15-year enhancement for aggravated kidnapping violates the proportionate penalties clause of Section 11 of Article I of the Illinois Constitution (ILCON Art. I, Sec.11). The appellate court held that a statute violates the proportionate penalties clause if the described offense, when compared to an offense having identical elements, carries a different sentence. The appellate court held that the commission of the offense of kidnapping while armed with a firearm, such as a handgun, constitutes both aggravated kidnapping and armed violence under Article 33A of the Code (720 ILCS 5/Art. 33A (West 2000)). Aggravated kidnapping is a Class X felony that is punishable by 21 to 45 years in prison, while armed violence is a Class X felony that is punishable by 15 to 30 years in prison. The 15-year enhancement for aggravated kidnapping while armed with a firearm violates the proportionate penalties clause of the Illinois Constitution.

CRIMINAL CODE OF 1961 - SENTENCE ENHANCEMENTS

Mandatory sentence enhancements for aggravated kidnapping, armed robbery, and aggravated vehicular hijacking, based on commission while armed with a firearm, are unconstitutionally disproportionate penalties.

In *People v. Moss*, 206 Ill. 2d 503 (2003), the defendants in 12 consolidated appeals challenged the constitutionality of sentencing enhancements added by Public Act 91-404, effective January 1, 2000, to certain offenses set forth in the Criminal Code of 1961. The Illinois Supreme Court held that with regard to the offenses of aggravated

kidnapping (720 ILCS 5/10-2 (West 2000)), armed robbery (720 ILCS 5/18-2 (West 2000)), and aggravated vehicular hijacking (720 ILCS 5/18-4 (West 2000)), the 15-year and 20-year add-ons mandated by Public Act 91-404 are unconstitutional because they violate the proportionate penalties clause of Section 11 of Article I of the Illinois Constitution (ILCON Art. I, Sec. 11). The less serious conduct proscribed in the Public Act 91-404 offenses involving possession of a firearm (15-year add-on) and personal discharge of a firearm (20-year add-on) is punished more harshly than is the more serious conduct targeted by the statutes setting forth the offenses of aggravated battery with a firearm (720 ILCS 5/12-4.2) and aggravated discharge of a firearm (720 ILCS 5/24-1.2).

CRIMINAL CODE OF 1961 - RETAIL THEFT

The statutory presumption that a person who conceals and removes merchandise from a retail store without paying for it does so intentionally is an unconstitutional mandatory presumption.

In *People v. Taylor*, 344 Ill. App. 3d 929 (1st Dist. 2003), the defendant challenged the constitutionality of Section 16A-4 of the Criminal Code of 1961 (720 ILCS 5/16A-4 (West 2000)). Section 16A-4 provides that when a person conceals “merchandise displayed, held, stored or offered for sale in a retail mercantile establishment” and removes that merchandise from the last known station to pay for the merchandise, that person “shall be presumed to have possessed, carried away or transferred such merchandise with the intention of retaining it or with the intention of depriving the merchant permanently of the possession, use or benefit of such merchandise without paying the full retail value of such merchandise”. The court found that the phrase “shall be presumed” creates an unconstitutional mandatory presumption. As written, Section 16A-4 removes the discretion of a trier of fact to find that the defendant may have removed an item from a retail mercantile establishment through inadvertence or thoughtlessness, rather than intentionally.

CRIMINAL CODE OF 1961 - CIVIL FORFEITURE

The State may seize a vehicle used in the commission of felony DUI, even though the vehicle’s owner was acquitted of that felony.

In *People v. 1995 Ford Van*, 348 Ill. App. 3d 303 (2nd Dist. 2004), the claimant was acquitted of driving under the influence of alcohol (DUI) under Section 11-501 of the Illinois Vehicle Code (625 ILCS 5/11-501 (West

2000)) while his license was revoked, which is a Class 4 felony. He argued that the State was collaterally estopped from seizing his car under the civil forfeiture provisions in Section 36-1 of the Criminal Code of 1961 (720 ILCS 5/36-1 (West 2000)). Section 36-1 provides that a vehicle that is “used with the knowledge and consent of the owner in the commission of [Class 4 felony DUI] . . . may be seized”. The court held that, even though the claimant was acquitted of the DUI charge upon which the seizure was based, the State was not collaterally estopped from attempting to seize the claimant’s vehicle because a proceeding under Section 36-1 is civil in nature and requires a lower burden of proof than the criminal DUI statute.

ILLINOIS CREDIT CARD AND DEBIT CARD ACT –POSSESSION OF COUNTERFEIT CARDS

The provision that possession of 2 or more counterfeit credit or debit cards is prima facie evidence of intent to defraud or of knowledge that the cards are counterfeit is an unconstitutional mandatory presumption.

In *People v. Miles*, 344 Ill. App. 3d 315 (2nd Dist. 2003), the defendant was convicted of possession of a counterfeit credit card in violation of Section 16 of the Illinois Credit Card and Debit Card Act (720 ILCS 250/16 (West 2002)). Contesting her conviction, the defendant claimed that Section 16 contains an unconstitutional mandatory presumption of intent. Section 16 provides that a person who, with intent to defraud, counterfeits a credit or debit card, or possesses a credit or debit card with knowledge that the card has been counterfeited, is guilty of a Class 3 felony. The statute further provides that the possession by a person, other than the purported issuer, of 2 or more counterfeit credit or debit cards is prima facie evidence that the person intended to defraud or that the person knew the credit or debit cards to have been so counterfeited. Prima facie is defined as a fact presumed to be true unless disproved by some evidence to the contrary. Relying on *People v. Pomykala*, 203 Ill. 2d 198 (2003), the court held that if a statute incorporating the definition of prima facie to establish an element of a criminal offense creates a prohibited mandatory presumption, then a statute that uses the object of the definition, that is, prima facie, to establish an element is similarly prohibited. In the present case, the defendant’s intent to defraud was established only by the State’s evidence showing that she possessed 6 counterfeit credit cards. As a result, the State was relieved of its burden of proving beyond a reasonable doubt the defendant’s intent to defraud, and the burden was shifted to the defendant to prove that she had no intent to defraud or had no knowledge that she possessed counterfeit credit

cards. The court held that Section 16 creates an unconstitutional mandatory presumption of intent to defraud but that the provision was severable from the remainder of the statute.

CODE OF CRIMINAL PROCEDURE OF 1963 – COURT APPEARANCE

A defendant's appearance by closed-circuit television at a guilty plea hearing violates his constitutional right to be physically present unless the defendant consents in writing.

In *People v. Stroud*, 208 Ill. 2d 398 (2004), the appellate court had held that the defendant's plea of guilty over closed-circuit television violated his right under Section 8 of Article I of the Illinois Constitution (ILCON Art. I, Sec. 8) to be present at a critical stage of the proceeding. Section 106D-1 of the Code of Criminal Procedure of 1963 (725 ILCS 5/106D-1 (West 2000)) provides that the court may allow the defendant to personally appear at any pre-trial or post-trial proceeding by way of closed-circuit television. The Illinois Supreme Court held that, while it is not clear under Section 106D-1 what kinds of proceedings may be conducted by closed-circuit television or whether a defendant's consent to the procedure would be required, a defendant's appearance at a guilty plea proceeding via closed-circuit television is constitutionally permissible only if the defendant waives his or her right to be in the courtroom. The court held that the right to be physically present should be given by the trial judge at the beginning of the guilty plea proceeding as part of the admonitions required by Illinois Supreme Court Rule 402, unless the defendant has previously given written consent to the closed-circuit procedure.

SEXUALLY DANGEROUS PERSONS ACT – MENTAL DISORDER

The Act must be read to incorporate the Sexually Violent Persons Commitment Act's definition of mental disorder and standard of propensity to commit sexual offenses.

In *People v. Masterson*, 207 Ill. 2d 305 (2003), the defendant argued that his commitment as a sexually dangerous person did not comport with the requirements of substantive due process. Section 1.01 of the Sexually Dangerous Persons Act (725 ILCS 205/1.01 (West 1998)) defines a sexually dangerous person, who is subject to commitment, as a person suffering from a "mental disorder" of a certain duration and who has "demonstrated propensities toward acts of sexual assault or acts of sexual molestation of

children”. The Act does not, however, define “mental disorder” and does not provide an explicit standard for gauging the probability or likelihood that a defendant will commit sexual offenses in the future. The Illinois Supreme Court held that the definition of “mental disorder” contained in the Sexually Violent Persons Commitment Act (725 ILCS 207/) and that Act’s standard for determining the likelihood that a defendant will commit a sexual offense in the future should be read into the Sexually Dangerous Persons Act. The 2 Acts are related in subject and proximity, and they are undoubtedly governed by one spirit and a single policy. It is merely an oversight of the General Assembly that the Sexually Dangerous Persons Act has not been amended to make its language consistent with that of the Sexually Violent Persons Commitment Act.

UNIFIED CODE OF CORRECTIONS – COMMUTATIONS

The Governor possesses broad powers to grant reprieves, pardons, and commutations, which cannot be regulated by the judiciary or legislature.

In *People ex rel. Madigan v. Snyder*, 208 Ill. 2d 457 (2004), the Attorney General in an original action for a writ of mandamus on behalf of the people of the State challenged the validity of certain commutation orders entered by Governor George Ryan because the orders did not comply with Section 3-3-13 of the Unified Code of Corrections (730 ILCS 5/3-3-13 (West 2002)). That Section sets forth requirements for the application of clemency. The Illinois Supreme Court denied the writ and held that Section 12 of Article V of the Illinois Constitution (ILCON Art. V, Sec. 12) grants extremely broad powers to the Governor to grant reprieves, pardons, and commutations, and those powers cannot be regulated by the courts or by the General Assembly.

CODE OF CIVIL PROCEDURE – NOTICE OF APPRAISAL

The requirement that the notice of appraisal be delivered to an owner whose home is subject to a sheriff’s sale connotes personal service.

In *Northwest Diversified, Inc. v. Mauer*, 341 Ill. App 3d 27 (1st Dist. 2003), a homeowner contested the sale of her home by sheriff’s sale because she was not personally served with the 60-day notice, the appraisal, or the levy. The court held that personal service of the appraisal was required under Section 12-911 of the Code of Civil Procedure (735 ILCS 5/12-911 (West 1998)). Section 12-911 provides that the officer shall "deliver a copy

thereof to the judgment debtor, or to some one of the family of the age of 13 years or upwards". The court reasoned that, while the statute does not expressly require personal service, the use of the word "deliver" and the reference to substituted service connote personal service. The court further held that the homeowner was entitled to personal service of the certificate of levy, even though there is no statutory provision requiring that service.

CODE OF CIVIL PROCEDURE – NOTICE OF NAME CHANGE

The Code's requirement of notice by publication of a petition to change a name is unconstitutional to the extent it permits a custodial parent to change a child's surname without actual notice to the noncustodial parent.

In *In re Petition of Sanjuan-Moeller*, 343 Ill. App. 3d 202 (2nd Dist. 2003), a noncustodial parent contended that he was entitled to actual notice of the petition filed by the custodial parent to change the surname of his child. Section 21-103 of the Code of Civil Procedure (735 ILCS 5/21-103 (West 1998)) requires notice of such a petition by publication, but does not explicitly require a custodial parent to serve the noncustodial parent with actual notice. The court held that subsection (b) of Section 21-103 is unconstitutional to the extent that it allows a custodial parent to change the name of his or her child without actual notice to the noncustodial parent.

MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES CONFIDENTIALITY ACT - PHARMACY RECORDS

A pharmacy is an "agency" for purposes of the nondisclosure of its pharmaceutical records of a recipient of mental health or developmental disabilities services.

In *re Marriage of Peters-Farrell*, 345 Ill. App. 3d 603 (1st Dist. 2003), considered the question of whether pharmaceutical records from a pharmacy are protected from disclosure under the Mental Health and Developmental Disabilities Confidentiality Act. Subsection (a) of Section 10 of the Act (740 ILCS 110/10 (West 2000)) provides that a recipient of mental health services may prevent disclosure of his or her records in court proceedings. Section 2 (740 ILCS 110/2 (West 2000)) defines "record" as "any record kept by a therapist or an agency in the course of providing mental health or developmental disabilities service to a recipient concerning the recipient and the services provided". Section 2 defines "services" to include pharmaceuticals. The term "agency" is not defined by the Act, but the court

noted that a dictionary defined an agency as “an establishment engaged in doing business for another”. The court further noted that a pharmacy would constitute an agency, because it engages in business for doctors by filling the prescriptions ordered by them for their patients. The court said, however, that while the Act clearly protects the pharmaceutical records of a recipient of mental health services from disclosure, the language of the Act defining “record” is ambiguous in that it rendered the phrase “records kept by an agency” subject to different interpretations, either including or excluding records kept by pharmacists. The court therefore relied on the Act's purpose - to protect mental health records from disclosure in all but specifically enumerated circumstances - for its finding that pharmaceutical records from a pharmacy are protected from disclosure under the Act.

LOCAL GOVERNMENTAL AND GOVERNMENTAL EMPLOYEES TORT IMMUNITY ACT – POLICE PURSUITS

The General Assembly should consider the issue of blanket immunity from liability for police pursuits.

In *Suwanski v. Village of Lombard*, 342 Ill. App. 3d 248 (2nd Dist. 2003), the plaintiff, who was injured as the result of a police pursuit, appealed from an order granting summary judgment to the defendants under Section 2-202 of the Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/2-202 (West 1998)). Section 2-202 provides that a public employee is not liable for his or her act or omission in the execution or enforcement of any law unless that employee's act or omission constitutes willful and wanton conduct. The appellate court held that the summary judgment was improper because Section 2-202 does not give blanket immunity for all police pursuits and that a reasonable question existed for the jury to decide. The court further suggested that the General Assembly examine the issue to decide whether blanket immunity from liability for police pursuits should be covered under the Act.

EQUINE ACTIVITY LIABILITY ACT – PARTICIPANT RESPONSIBILITY

The Act is unclear as to the scope of immunity from liability due to obvious drafting errors.

Kush v. Wentworth, 339 Ill. App. 3d 157 (2nd Dist. 2003), addressed immunity from liability under the Equine Activity Liability Act for injuries the plaintiff suffered when she was kicked by the defendant's horse while

participating in a group ride. Section 15 of the Act (745 ILCS 47/15 (West 2000)) provides an assumption of risk defense against liability and then states that there are exceptions to that defense enumerated in Section 20 of the Act that apply only to equine activity sponsors and equine professionals. Subsection (b) of Section 20 (745 ILCS 47/20 (West 2000)), however, provides that its exceptions apply to “any other person”, as well as to equine activity sponsors and equine professionals. Subsection (b) of Section 20 also contains a qualification that excepts Section 15 from the operation of subsection (b) of Section 20 and creates a repeating loop of statutory reference; each Section provides that the other Section controls. The court found that the loop of statutory reference is an obvious drafting error and that the language of subsection (b) of Section 20 is unclear regardless of the statutory self-reference problem. Subsection (b) of Section 20 is only meaningful if it is an exception to Section 15, which is not the case, as subsection (b) expressly provides that Section 15 is an exception to subsection (b). In an attempt to circumvent the Act’s ambiguity, the court stated that when the legislature created the duty, it did not mean to simultaneously eliminate any potential liability for violating the duty. The court further stated that the Act does not preclude negligence liability for persons other than equine activity sponsors and equine professionals.

UNIFORM INTERSTATE FAMILY SUPPORT ACT - ENFORCEMENT

When all relevant parties reside outside Illinois, an Illinois court’s continuing, exclusive jurisdiction over its child support order extends to modification, not enforcement, of the order.

In *Zaabel v. Konetski*, 209 Ill. 2d 127 (2004), a parent who was ordered to pay child support challenged the circuit court’s power to enforce the order under Section 205 of the Uniform Interstate Family Support Act (750 ILCS 22/205 (West 2002)). Subsection (a)(1) of Section 205 provides that an Illinois court that issues a child support order has continuing, exclusive jurisdiction over the order as long as Illinois remains the residence of the obligor, the individual obligee, or the child. Subsection (a)(2) of Section 205 provides that the Illinois court has continuing, exclusive jurisdiction until all parties have filed consents to a transfer of jurisdiction to a court of another state. The parent argued that “by negative implication” subsection (a)(1) of Section 205 means that the Illinois court loses jurisdiction over the child support order when everyone resides elsewhere. The Illinois Supreme Court held that subsection (a) of Section 205 is

ambiguous with regard to whether continuing, exclusive jurisdiction is lost where all relevant persons reside outside Illinois but not all parties have filed consent to jurisdiction elsewhere. However, looking beyond the language of the Act, the court concluded that the drafters of the Act intended subsection (a) of Section 205 to apply only to the court's jurisdiction to modify its support orders and not its jurisdiction to enforce support orders when all relevant persons reside outside Illinois.

ADOPTION ACT – PARENTAL UNFITNESS

When determining parental unfitness after an adjudication of child abuse or neglect, the parent's efforts toward correcting conditions that led to the adjudication and the parent's progress toward return of the child must both be evaluated in the 9 months following the adjudication.

In *In re D.F.*, 208 Ill. 2d 223 (2003), a mother was determined to be unfit after an adjudication of abuse and neglect. She argued that, under the plain language of the Adoption Act, the court should evaluate (i) all of her efforts to correct the conditions that led to the adjudication and (ii) her progress toward the return of the children within the 9 months after the dispositional order, rather than after the adjudication. Subsection (D)(m) of Section 1 of the Adoption Act (750 ILCS 50/1 (West 2000)) provides that, after an adjudication of abuse, neglect, or dependency, a court may deem a parent to be unfit if the parent fails to make reasonable efforts to correct the conditions that led to the removal of the children or has not made reasonable progress toward their return. It also requires the court to evaluate the parent's efforts and progress over a 9-month time period. However, grammatical changes in an amendment to the statute appear to separate the reasonable efforts requirement from the 9-month time period. The Illinois Supreme Court held that, even though the plain language of the statute may support an open-ended time period for evaluation of reasonable efforts to correct the conditions that were the basis for the adjudication, such an open-ended time period would be against the public policy of seeking to provide permanency for the children involved. Therefore, the 9-month time frame applies to both the reasonable efforts and the reasonable progress made by the parent. In addition, the court held that the 9-month time period begins on the date of the adjudication, not on the date of the dispositional order.

CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT – CAR DEALERS

Provisions treating new and used vehicle dealers differently from other consumer fraud defendants are unconstitutional special legislation.

In *Allen v. Woodfield Chevrolet, Inc.*, 208 Ill. 2d 12 (2003), the plaintiff who sought monetary damages from a used car dealer under Section 10a of the Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/10a (West 1996)), also sought a declaration that the provisions of that Section treating new and used vehicle dealers more favorably than other similarly situated consumer fraud defendants violates the Illinois Constitution's prohibition against special legislation (ILCON Art. IV, Sec. 13). The Illinois Supreme Court invalidated those portions of Section 10a of the Act that were added or amended by Public Act 87-1140, effective January 1, 1993, and Public Act 89-144, effective January 1, 1996, holding that those amendments discriminated in favor of vehicle dealers and that no valid purpose was served by treating those dealers differently from other defendants. Public Act 87-1140 added subsection (f) to Section 10a, providing that a vehicle dealer sued under the provision may, no later than 31 days before the date of trial, make an offer to settle the case that could affect the plaintiff's right to attorney's fees under the Act. If the plaintiff does not accept the offer, and the amount awarded at trial is less than the amount offered, the plaintiff is not entitled to any fees incurred after the date of the offer. Public Act 87-1140 also added subsection (g), which grants a similar privilege to the plaintiff. If the defendant vehicle dealer refuses the plaintiff's settlement offer, and the award is greater than the amount of the offer, the plaintiff is entitled to interest accrued on the judgment from the date of the offer. Public Act 89-144 amended subsection (a) of Section 10a to provide that punitive damages could not be awarded against a vehicle dealer unless the dealer's conduct was willful or intentional and done with evil motive or reckless indifference to the rights of others. Subsection (a) was further amended to provide that the plaintiff is required to show a "public injury" in order to recover from a defendant vehicle dealer. Public Act 89-144 also added subsection (h), providing that, at least 30 days before filing suit under Section 10a, a plaintiff is required to give a defendant vehicle dealer written notice of the alleged violation and the plaintiff's demand for relief, allowing the defendant to make a settlement offer. If the plaintiff refuses the settlement, and the amount awarded is less than the amount of the offer, the plaintiff is not entitled to attorney's fees incurred after the date of refusal. The court found that these amendments did not serve the purpose of the 2 Public Acts, which, according to their legislative histories, was to prevent

certain members of the plaintiffs' bar from pursuing consumer fraud actions against vehicle dealers solely for the purpose of generating attorney's fees under the Act. Two justices filed a partial concurrence and partial dissent, arguing that only the amendments to subsection (a) are invalid.

BEER INDUSTRY FAIR DEALING ACT - MANDATORY ARBITRATION

The Act's prohibition against mandatory arbitration clauses in contracts between brewers and distributors violates federal law.

In *Stawski Distributing Co., Inc. v. Browary Zywiec S.A.*, 349 F. 3d 1023 (7th Cir. 2003), a Polish brewing company that had been sued in federal court under the Beer Industry Fair Dealing Act sought to enforce a “take it or leave it” provision in its contract with the plaintiff Illinois beer distributor. The contract provision required that any dispute be submitted to arbitration in Poland. Paragraph (12) of Section 5 of the Beer Industry Fair Dealing Act (815 ILCS 720/5) provides that a brewer may not present to a distributor a contract requiring the arbitration of all disputes without also offering the distributor, in writing, the option of rejecting arbitration and proceeding with a civil suit under the Act. The United States Seventh Circuit Court of Appeals ruled that the mandatory arbitration clause in the contract was enforceable in spite of the Act, because the Federal Arbitration Act (9 U.S.C. 201-208) prevents any state from subjecting arbitration to rules that are not generally applicable to other contractual choices. The court further stated that Section 2 of the Twenty-First Amendment to the United States Constitution, which allows states to restrict liquor imports, does not require a different result.

EMPLOYMENT OF STRIKEBREAKERS ACT - PREEMPTION

The Act, which criminalizes an employer's hiring of temporary workers during a strike, is preempted by federal law, which permits that hiring.

In *Caterpillar Inc. v. Lyons*, 318 F. Supp. 2d 703 (C.D. Ill. 2004), the plaintiff challenged the Employment of Strikebreakers Act (820 ILCS 30/) on the grounds that the Act is preempted by the federal National Labor Relations Act. The Employment of Strikebreakers Act subjects to criminal sanctions any employer who knowingly contracts with a day and temporary labor service agency to provide replacements for its employees in the event of a strike or a lockout. The plaintiff argued that it would otherwise be able

to use both professional strikebreakers and contract with day and temporary labor service agencies under Section 9 of the National Labor Relations Act. The court held that the Employment of Strikebreakers Act is an intrusion into the substantive process of collective bargaining beyond the extent countenanced by Congress. Because the National Labor Relations Act reflects Congress' intent to create a uniform national body of labor law, the Employment of Strikebreakers Act is preempted under the Garmon doctrine, which forbids state and local regulation of activities that the National Labor Relations Act protects or prohibits.

INTRODUCTION TO PART 2

Part 2 of this 2004 Case Report contains all the Illinois statutes that LRB research has found that have been held unconstitutional and remain in the Illinois Compiled Statutes without having been changed in response to the holding of unconstitutionality.

PART 2
CUMULATIVE REPORT OF STATUTES HELD
UNCONSTITUTIONAL AND NOT AMENDED OR REPEALED IN
RESPONSE TO THE HOLDING OF UNCONSTITUTIONALITY

GENERAL PROVISIONS

5 ILCS 315/ (West 1992). **Illinois Public Labor Relations Act.** Application of the Act by the State Labor Relations Board to employees of the Illinois Supreme Court violated the separation of powers doctrine by infringing upon the court's administrative and supervisory powers granted under the Illinois Constitution, Art. VI, Sec. 18. *Administrative Office of the Illinois Courts v. State and Municipal Teamsters, Chauffeurs and Helpers Union, Local 726, International Brotherhood of Teamsters, AFL-CIO*, 167 Ill. 2d 180 (1995).

5 ILCS 350/2 (P.A. 89-688). **State Employee Indemnification Act.** Provision amended by P.A. 89-688 is unconstitutional because P.A. 89-688 violates the single-subject rule of Section 8 of Article IV of the Illinois Constitution. *People v. Foster*, 316 Ill. App. 3d 855 (4th Dist. 2000), and *People v. Burdunice*, 211 Ill. 2d 264 (2004). (These cases are also reported in this Part 2 of this Case Report under "Criminal Offenses", "Criminal Procedure", and "Corrections".)

ELECTIONS

10 ILCS 5/2A-1 and 5/2A-9 (P.A. 89-719). **Election Code.** (See *Cincinnati Insurance Co. v. Chapman*, 181 Ill. 2d 65 (1997), reported in this Part 2 of this Case Report under "Courts", concerning the inseverability of unconstitutional provisions of the Judicial Redistricting Act of 1997 enacted by P.A. 89-719.)

10 ILCS 5/7-10. Election Code. Provision (Ill. Rev. Stat., ch. 46, par. 7-10) that requires candidates for ward committeeman in the city of Chicago to meet higher nomination petition signature requirements than candidates for township committeeman in Cook County violates the equal protection clause

by burdening the right of individuals to associate for the advancement of political beliefs and the right of voters to cast their votes effectively by creating a geographical classification substantially injuring the voters and candidates of the city of Chicago despite less burdensome alternatives. *Smith v. Board of Election Commissioners of the City of Chicago*, 587 F. Supp. 1136 (N.D. Ill. 1984) and *Gjersten v. Board of Election Commissioners for the City of Chicago*, 791 F. 2d 472 (7th Cir. 1986).

10 ILCS 5/7-10.1 (Ill. Rev. Stat. 1971, ch. 46, par. 7-10.1). **Election Code.** In the Article concerning nominations by political parties, the form for a petition or certificate of nomination contains a loyalty oath. The loyalty oath provision was held unconstitutional as vague and overly broad, violating the U.S. Constitution, Amendments I and XIV. *Communist Party of Illinois v. Ogilvie*, 357 F. Supp. 105 (N.D. Ill. 1972).

10 ILCS 5/7-43 (Ill. Rev. Stat., ch. 46, par. 7-43). **Election Code.** Provision prohibiting a person from voting in a political party primary if the person voted in another political party's primary in the preceding 23 months was held to substantially burden that person's right to vote in derogation of Article I, Section 2 of the U.S. Constitution. The court also found the "23 month rule" to be a significant incursion on a person's right of free association and declared the provision null and void. *Kusper v. Pontikes*, 94 S. Ct. 303 (1973).

10 ILCS 5/10-2. Election Code. In the Article concerning the making of nominations in certain other cases, a provision (Ill. Rev. Stat. 1941, ch. 46, par. 291) prohibits a political organization or group from being qualified as a political party and assigned a place on the ballot if the organization or group is associated, directly or indirectly, with Communist, Fascist, Nazi, or other un-American principles and engages in activities or propaganda designed to teach subservience to the political principles and ideals of foreign nations or the overthrow by violence of the federal or State constitutional form of government. The provision is unconstitutionally vague, lacking the definiteness required in a statute affecting the rights of a political group to appeal to the electorate. Identical language is used in a similar context in 10 ILCS 5/7-2 and 5/8-2. *Feinglass v. Reinecke*, 48 F. Supp. 438 (N.D. Ill. 1942).

Provision (Ill. Rev. Stat. 1989, ch. 46, par. 10-2) regarding establishment of a new political party is invalid to the extent it requires more signatures to form a new political party in a multidistrict subdivision than it does for a statewide new political party. Violates the U.S. Constitution, Amendments I and XIV. *Norman v. Reed*, 112 S. Ct. 698 (1992).

10 ILCS 5/10-5 (Ill. Rev. Stat. 1989, ch. 46, par. 10-5). **Election Code.** Prohibition against new party candidates in one political subdivision from using the same party name as that of a party in a different subdivision is broader than necessary to protect the State's interest in prohibiting candidates from adopting the name of a political party with which they are not affiliated. Violates Amendments I and XIV of the U.S. Constitution. *Norman v. Reed*, 112 S. Ct. 698 (1992).

EXECUTIVE OFFICERS

15 ILCS 335/14B (West 1998). **Illinois Identification Card Act.** The Class 4 felony penalty for the offense of knowingly possessing a fraudulent identification card, which includes a mandatory minimum fine or community service, is disproportionate to the Class 4 felony penalty for the more serious offense of knowingly possessing a fraudulent identification card with aggravating elements, which does not include mandatory minimums, in violation of the proportionate penalties requirement of Section 11 of Article I of the Illinois Constitution (ILCON Art. I, Sec. 11). *People v. Pizano*, 347 Ill. App. 3d 128 (1st Dist. 2004).

EXECUTIVE BRANCH

20 ILCS 505/5 (Ill. Rev. Stat., ch. 23, par. 5005). **Children and Family Services Act.**

225 ILCS 10/2.05 and 10/2.17 (Ill. Rev. Stat., ch. 23, pars. 2212.05 and 2212.17). **Child Care Act of 1969.**

Provisions of the Children and Family Services Act and the Child Care Act of 1969 that deny AFDC-FC (foster care) payments to foster parents who are related to the foster children they care for conflict with the Social Security Act and are unconstitutional as violating that Act and therefore the supremacy

clause of the U.S. Constitution. *Youakim v. Miller*, 431 F. Supp. 40 (N.D. Ill. 1976).

The transition schedule provided by Section 5 of the Children and Family Services Act for discontinuing foster care payments to any foster family homes other than licensed foster family homes violates the due process rights of pre-approved and approved foster family homes guaranteed by the U.S. Constitution, Amend. XIV. *Youakim v. McDonald*, 71 F. 3d 1274 (7th Cir. 1995).

LEGISLATURE

25 ILCS 115/1 (Ill. Rev. Stat. 1991, ch. 63, par. 14). **General Assembly Compensation Act.** Amendatory changes made to this Section by P.A. 86-27 provide for annual, lump sum additional payments to certain legislators in leadership positions. Because P.A. 86-27 further provided that the pay raises were to be effective retroactively, the legislation is unconstitutional to the extent it allowed for a change in a legislator's salary during the term for which he or she was elected. *Rock v. Burris*, 139 Ill. 2d 494 (1990).

25 ILCS 120/5.5 (West 2002). **Compensation Review Act.** Section denying the fiscal year 2003 cost-of-living adjustment to the salaries of State officials (previously recommended by the Compensation Review Board and not disapproved by the General Assembly) is unconstitutional with respect to salaries of State judges because it violates the Illinois Constitution's separation of powers clause (ILCON Art. II, Sec. 1) and prohibition against decreasing a judge's salary during his or her term (ILCON Art. VI, Sec. 14). *Jorgensen v. Blagojevich*, 211 Ill. 2d 286 (2004).

FINANCE

30 ILCS 5/3-1 (West 2000). **Illinois State Auditing Act.** Requirement that the Auditor General perform compliance and management audits of various Chicago airports exceeds the Auditor General's authority under subsection (b) of Section 3 of Article VIII of the Illinois Constitution (ILCON Art. VIII, Sec. 3) to audit public funds of the State, because the airports' funds are not appropriated by the General Assembly but are derived from user fees and federal grants. *City of Chicago v. Holland*, 206 Ill. 2d 480 (2003).

30 ILCS 105/5.400 (P.A. 88-680). **State Finance Act.** Provision added by P.A. 88-680 is unconstitutional because P.A. 88-680 violates the single-subject rule of Section 8 of Article IV of the Illinois Constitution. P.A.s 91-54, 91-155, 91-404, 91-690, 91-691, 91-692, 91-693, 91-694, 91-695, and 91-696 re-enacted portions, but not all, of the substance of P.A. 88-680. *People v. Dainty*, 299 Ill. App. 3d 235 (3rd Dist. 1998), *People v. Williams*, 302 Ill. App. 3d 975 (2nd Dist. 1999), *People v. Edwards*, 304 Ill. App. 3d 250 (2nd Dist. 1999), and *People v. Cervantes*, 189 Ill. 2d 80 (1999). (These cases are also reported in this Part 2 of this Case Report under “Courts”, “Criminal Offenses”, and “Corrections” and in Part 3 of this Case Report under “Criminal Offenses”.)

30 ILCS 560/ (Ill. Rev. Stat. 1981, ch. 48, par. 269 *et seq.*). **Public Works Preference Act.** Act is completely unconstitutional because it requires that only Illinois laborers may be used for building public works, which violates the privileges and immunities clause of the U.S. Constitution. *People ex rel. Bernardi v. Leary Construction Co., Inc.*, 102 Ill. 2d 295 (1984).

REVENUE

35 ILCS 5/203 (Ill. Rev. Stat. 1979, ch. 120, par. 2-203). **Illinois Income Tax Act.** Department of Revenue’s construction of provision that any corporation which is a member of an affiliated group of corporations filing a consolidated federal income tax return, incurring a net operating loss on a separate Illinois income tax return basis, be deemed to have made the election provided in the Internal Revenue Code (that is, to relinquish the entire carryback period and only carry forward the loss) violates the uniformity of taxation clause of Article IX, Section 2 of the Illinois Constitution as to corporate taxpayers of an affiliated group which files a consolidated federal income tax return reflecting a net operating loss, which operating loss the parent company does not elect to carry forward. *Searle Pharmaceuticals, Inc. v. Department of Revenue*, 117 Ill. 2d 454 (1987).

35 ILCS 200/20-180 and 200/20-185. **Property Tax Code.** Provisions (formerly part of the Uncollectable Tax Act, Ill. Rev. Stat. 1981,

ch. 120, pars. 891 and 891.1) that allow a municipality to cancel bonds and use moneys collected for similar projects after revenues that were specified to secure the bonds are deemed uncollectable are an unconstitutional impairment of contractual obligations. *George D. Hardin, Inc. v. Village of Mt. Prospect*, 99 Ill. 2d 96 (1983).

35 ILCS 200/22-45 (West 1994). **Property Tax Code.** Provision that limits the ways a party may contest the issuance of a tax deed to (i) appeal to the appellate court or (ii) seek certain statutory relief from judgment conflicts with Supreme Court Rule 303 and a court's inherent power to reconsider its judgments and orders for a period of 30 days. Thus, the statute violates the separation of powers doctrine and is unconstitutional. *In re Application of the County Collector*, 281 Ill. App. 3d 467 (2nd Dist. 1996).

35 ILCS 520/ (Ill. Rev. Stat. 1989, ch. 120, par. 2151 *et seq.*). **Cannabis and Controlled Substances Tax Act.** Statute is invalid and cannot be applied if the defendant has been convicted of criminal charges involving the same contraband. Violates the double jeopardy provisions of the U.S. and Illinois constitutions. *Department of Revenue of Montana v. Kurth*, 114 S. Ct. 1937 (1994).

35 ILCS 635/20 (West 1998). **Telecommunications Municipal Infrastructure Maintenance Fee Act.** Application of the Act's municipal infrastructure maintenance fee, imposed upon telecommunications providers to compensate a municipality for access to public rights-of-way, equally to wireless telecommunications providers that do not own or operate equipment on public rights-of-way as to landline telecommunications providers that do own or operate equipment on public rights-of-way violates the uniformity clause of Section 2 of Article IX of the Illinois Constitution. *Primeco Personal Communications, L. P. v. Illinois Commerce Commission*, 196 Ill. 2d 70 (2001).

PENSIONS

40 ILCS 5/5-128 and 5/5-167.1 (Ill. Rev. Stat. 1989, ch. 108 1/2, pars. 5-128 and 5-167.1). **Illinois Pension Code.** Amendatory changes in P.A. 86-

272, which fix a police officer's pension as of the date of withdrawal from service rather than attainment of age 63, result in a taking of property without due process of law in violation of the Fourteenth Amendment to the United States Constitution when applied to retired police officers whose pensions consequently decreased. *Miller v. Retirement Board of Policemen's Annuity and Benefit Fund of the City of Chicago*, 329 Ill. App. 3d 589 (1st Dist. 2002).

COUNTIES

55 ILCS 5/5-1120 (P.A. 89-203). **Counties Code.** Provision added by P.A. 89-203 is unconstitutional because P.A. 89-203 violates the single-subject rule of Section 8 of Article IV of the Illinois Constitution. *People v. Wooters*, 188 Ill. 2d 500 (1999). (This case is also reported in this Part 2 of this Case Report under “Vehicles”, “Criminal Offenses”, “Corrections”, and “Civil Procedure”.)

TOWNSHIPS

60 ILCS 1/65-35 (Ill. Rev. Stat. 1967, ch. 53, par. 55.6). **Township Code.** Provision that allows a 2% commission on all moneys collected by a township collector to be deposited into the township treasury and to be used for local, rather than countywide, purposes is an unconstitutional violation of the uniformity of taxation clause of the Illinois Constitution. *Flynn v. Kucharski*, 45 Ill. 2d 211 (1970).

MUNICIPALITIES

65 ILCS 5/10-2.1-6 (Ill. Rev. Stat. 1977, ch. 24, par. 10-2.1-6). **Illinois Municipal Code.** Provision that prohibits appointing a person with a limb amputated to the police or fire department for anything but clerical or radio operator duties violates the Illinois Constitution, which prohibits discrimination against persons with a physical handicap. *Melvin v. City of West Frankfort*, 93 Ill. App. 3d 425 (5th Dist. 1981).

65 ILCS 5/11-13-1 (Ill. Rev. Stat. 1973, ch. 24, par. 11-13-1). **Illinois Municipal Code.** Statute authorizing a municipality to exercise zoning powers extraterritorially (that is, within a 1½-mile area contiguous to the municipality) was amended by P.A. 77-1373 (approved August 31, 1971) to add, as a permitted purpose of zoning regulation, the preservation

of historically, architecturally, or aesthetically important features. P.A. 77-1373 also provided: “This amendatory Act of 1971 does not apply to any municipality which is a home rule unit.”. Because a municipality has extraterritorial zoning authority only as granted by the legislature and not under its home rule powers, that added sentence, if valid, creates the incongruous situation of non-home rule municipalities being able to zone extraterritorially while home rule municipalities cannot. The sentence creates an unconstitutional classification and is void. (The court apparently read “this amendatory Act of 1971” to refer to the entire Section rather than to just the statement of purpose added by P.A. 77-1373.) *City of Carbondale v. Van Natta*, 61 Ill. 2d 483 (1975).

SPECIAL DISTRICTS

70 ILCS 705/14.14 (West 1992). **Fire Protection District Act.** Provision permitting disconnection of territory in a non-home rule municipality in a county with a population between 500,000 and 750,000 is unconstitutional as special legislation because the population limit is an arbitrary classification. *In re Petition of Village of Vernon Hills*, 168 Ill. 2d 117 (1995).

70 ILCS 705/19a (Ill. Rev. Stat. 1983 Supp., ch. 127½, par. 38.2a). **Fire Protection District Act.** Provision permitting transfer of territory in counties with a population of more than 600,000 but less than 1,000,000 is special legislation because the population limit is an arbitrary classification. *In re Belmont Fire Protection District*, 111 Ill. 2d 373 (1986).

SCHOOLS

105 ILCS 5/1B-20 (West 1994). **School Code.** Provision that authorizes a State Board of Education-appointed financial oversight panel to remove members of a local school board from office and does not require that the members be given notice of or a hearing on the removal charges is unconstitutional as applied to members who were not given notice or a hearing because that lack violates the members’ procedural due process rights. *East St. Louis Federation of Teachers v. East St. Louis School District*, 178 Ill. 2d 399 (1997).

105 ILCS 5/3-1 (Ill. Rev. Stat., ch. 122, par. 3-1). **School Code.** Provision requiring candidate for office of regional superintendent to have taught at least 2 of previous 4 years in Illinois is unconstitutional as a violation of the equal protection clause because the statute is not rationally related to the State's interest of ensuring that candidates be familiar with the School Code and other Illinois school regulations. *Hammond v. Illinois State Board of Education*, 624 F. Supp. 1151 (S.D. Ill. 1986).

105 ILCS 5/24-2. School Code. This Section provides that Good Friday is a legal school holiday and that teachers and other school employees shall not be required to work on legal holidays. The Good Friday provision promotes one religion over another and violates the establishment clause of the U.S. Constitution. *Metzl v. Leininger*, 57 F. 3d 618 (7th Cir. 1995).

HIGHER EDUCATION

110 ILCS 310/1 (P.A. 89-5, eff. 1-1-96). **University of Illinois Trustees Act.** A portion of Section 1 removing elected trustees from office midterm in order to create an appointed board violates the right to vote guaranteed by the Illinois Constitution, Art. III, Sec. 18. *Tully v. Edgar*, 171 Ill. 2d 297 (1996).

FINANCIAL REGULATION

205 ILCS 105/1-6 and 105/1-10.10 (Ill. Rev. Stat. 1957, ch. 32, pars. 706 and 710). **Illinois Savings and Loan Act.** Provisions authorizing a savings and loan association to obtain and maintain insurance on its withdrawable capital by the FSLIC or another federal instrumentality or federally chartered corporation violates the Illinois Constitution because it deprives both savings and loan associations and private insurance companies of their freedom to contract and it deprives private insurance companies of property without due process. There is no indication that a federally chartered corporation is more financially sound or better able to insure the accounts than a private corporation authorized to do business in Illinois and under the supervision of the Director of Insurance. (P.A. 86-137 amended the Act to add the FDIC as an eligible insurance corporation; P.A. 93-271 removed the FSLIC; but neither P.A. mentioned private insurers.) *City Savings Association v. International Guaranty and Insurance Co.*, 17 Ill. 2d 609 (1959).

INSURANCE

215 ILCS 5/143.01 (Ill. Rev. Stat. 1985, ch. 73, par. 755.01). **Illinois Insurance Code.** Subsection (b) of Section 143.01 prohibits the invocation of a vehicle insurance policy provision excluding coverage for bodily injury to members of the insured's family when the driver is not a member of the insured's household and further provides that the prohibition shall apply to any action filed on or after the effective date of the subsection (that is, the effective date of P.A. 83-1132, which added Section 143.01 to the Code). Retroactive application of the subsection to insurance policies issued before the effective date of P.A. 83-1132 constitutes an impairment of the obligation of contracts in violation of Section 10 of Article I of the Illinois Constitution. *Prudential Property & Casualty Insurance Co. v. Scott*, 161 Ill. App. 3d 372 (4th Dist. 1987).

UTILITIES

220 ILCS 5/8-402.1. Public Utilities Act. Requirements that Illinois utilities, in complying with federal Clean Air Act amendments, take into account the need to use Illinois coal, preserve the Illinois coal industry, and install pollution control devices in order to burn Illinois coal are too great a burden on interstate commerce. *Alliance for Clean Coal v. Craig*, 840 F. Supp. 554 (N.D. Ill. 1993).

220 ILCS 5/10-201 (Ill. Rev. Stat. 1985, ch. 111 2/3, par. 10-201). **Public Utilities Act.** Provisions relating to review of decisions by the Illinois Commerce Commission are unconstitutional to the extent that the procedures for direct review conflict with Supreme Court Rule 335 (for instance, subsection (e)(i) gives priority over other cases before the court and is an unwarranted intrusion into the court's power to control its docket *Consumers Gas Co. v. Ill. Commerce Comm.*, 144 Ill. App. 3d 229 (5th Dist. 1986).

PROFESSIONS AND OCCUPATIONS

225 ILCS 10/2.05 and 10/2.17 (Ill. Rev. Stat., ch. 23, pars. 2212.05 and 2212.17). **Child Care Act of 1969.** Provisions that deny AFDC-FC (foster care) payments to foster parents who are related to the foster children they care for conflict with the Social Security Act and are unconstitutional as

violating that Act and therefore the supremacy clause of the U. S. Constitution. *Youakim v. Miller*, 431 F. Supp. 40 (N.D. Ill. 1976). (This case is also reported in this Part 2 of this Case Report under “Executive Branch”.)

225 ILCS 25/31 (Ill. Rev. Stat. 1987, ch. 111, par. 2332). **Illinois Dental Practice Act.** Provision stating that, during review of a suspension under the Administrative Review Law, the suspension shall remain in full force and effect prohibits courts from exercising their inherent equitable powers to issue stays. To this extent, the Section is unconstitutional. (P.A. 88-184 limits the provision to acts or omissions related to direct patient care and states that as a matter of public policy suspension may not be stayed pending final resolution.) *Ardt v. Ill. Dept. of Professional Regulation*, 154 Ill. 2d 138 (1992).

225 ILCS 60/26 (West Supp. 1999). **Medical Practice Act of 1987.** Ban on a licensee’s use of testimonials to entice the public violates the First and Fourteenth Amendments to the U.S. Constitution by disproportionately prohibiting all truthful speech for the State’s goal of regulating the medical profession. *Snell v. Department of Professional Regulation*, 318 Ill. App. 3d 972 (4th Dist. 2001).

LIQUOR

235 ILCS 5/6-16 (West 2000). **Liquor Control Act of 1934.** Subsection (c), which makes it a Class A misdemeanor if a person knowingly permits the departure of an intoxicated minor from a gathering at the person’s residence of which the person has knowledge and at which the person knows a minor is illegally possessing or consuming liquor, is unconstitutionally vague in violation of the 14th Amendment of the U.S. Constitution because it fails to provide a person with notice as to how to avoid violating the subsection. *People v. Law*, 202 Ill. 2d 578 (2002).

235 ILCS 5/7-5 and 5/7-9 (Ill. Rev. Stat. 1967, ch. 43, pars. 149 and 153). **Liquor Control Act of 1934.** Provision permitting liquor licensees in a municipality of less than 500,000 inhabitants whose licenses are revoked by the local liquor control commissioner and who appeal the revocations to

the Illinois Liquor Control Commission to resume the operation of their businesses pending decisions by the Commission but not affording licensees in municipalities of 500,000 or more inhabitants who appeal revocations of their licenses to the License Appeal Commission a similar privilege is unconstitutional as a violation of the special legislation provision of the 1870 Illinois Constitution. (Article IV, Section 13 of the 1970 Constitution prohibits the General Assembly from passing special legislation when a general law can be made applicable.) There is no rational basis for the different treatment of licensees based upon differences in the population of the municipalities where the licensed premises are located. Absent legislative modification of the offending provision, licensees in all municipalities must be permitted to resume operation during the pendency of an administrative appeal from the order of a local liquor control commissioner. *Johnkol, Inc. v. License Appeal Commission*, 42 Ill. 2d 377 (1969).

235 ILCS 5/8-1 (Ill. Rev. Stat. 1985, ch. 43, par. 158). **Liquor Control Act of 1934.** The Department of Revenue taxed wine coolers and certain low-alcohol drinks at different rates pursuant to its interpretation of the Section 8-1 tax classification system. Because there is no real and substantial difference between wine coolers made by adding wine to fruit juices and the low-alcohol drinks made by adding distilled alcohol, the provision violates the uniformity clause of Section 2 of Article IX of the Illinois Constitution to the extent the provision does not provide for the equal taxation of wine coolers and the low-alcohol drinks. *Federated Distributors, Inc. v. Johnson*, 125 Ill. 2d 1 (1988).

235 ILCS 5/9-2. Liquor Control Act of 1934. Provision (Ill. Ann. Stat. 1990, ch. 43, par. 167) permitting a precinct in a city with a population exceeding 200,000 to vote a single “licensed establishment” dry is an unconstitutional violation of due process because the procedural safeguards inherent in an election to vote the entire precinct dry (also permitted under the statute) are not present. P.A. 88-613 subsequently amended the provision to substitute “street address” for “licensed establishment”. 87 *So. Rothschild Liquor Mart v. Kozubowski*, 752 F. Supp. 839 (N.D. Ill. 1990).

Provision permitting a precinct in a city with a population exceeding 200,000 to prohibit by referendum the sale of alcoholic beverages at a particular street address is an unconstitutional deprivation of the liquor

licensee's property without due process because due process forbids voters passing judgment on an existing business. *Club Misty, Inc. v. Laski*, 208 F. 3d 615 (7th Cir. 2000).

MENTAL HEALTH

405 ILCS 5/3-806 (West Supp. 1995). **Mental Health and Developmental Disabilities Code.** Provisions allowing a civil commitment hearing to take place without the respondent when the respondent has not voluntarily, intelligently, and knowingly waived his or her right to be present violate the due process clause of the U.S. Constitution. *In re Barbara H.*, 288 Ill. App. 3d 360 (2nd Dist. 1997). While affirming in part and reversing in part on other grounds, the Illinois Supreme Court declined to review the provision's constitutionality in *In re Barbara H.*, 183 Ill. 2d 482 (1998).

NUCLEAR SAFETY

420 ILCS 15/ (Ill. Rev. Stat., ch. 111½, par. 230.1 *et seq.*). **Spent Nuclear Fuel Act.** Act is unconstitutional because (i) by banning the storage and shipment for storage of spent nuclear fuel in Illinois merely because the spent fuel or its shipment originated out of State, the Act arbitrarily burdens interstate commerce in violation of the commerce clause (U.S. Constitution, Art. I, Sec. 8) and (ii) the federal Atomic Energy Act preempts state regulation of the storage and shipment for storage of spent nuclear fuel, and Illinois' Spent Nuclear Fuel Act therefore violates the supremacy clause (U.S. Constitution, Art. VI, cl. 2). *People of the State of Illinois v. General Electric Co.*, 683 F. 2d 206 (7th Cir. 1982).

PUBLIC SAFETY

430 ILCS 65/2 (West 1994). **Firearm Owners Identification Card Act.** (See *People v. Davis*, 177 Ill. 2d 495 (1997), reported in this Part 2 of this Case Report under "Corrections", concerning the disproportionality of penalties for possession of a firearm in violation of the Firearm Owners Identification Card Act and unlawful use of a firearm by a felon.)

430 ILCS 70/ (Ill. Rev. Stat. 1983, ch. 38, par. 85-1 *et seq.*). **Illinois Public Demonstrations Law.** The entire Act is unconstitutional because the

term “principal law enforcement officer”, used throughout the Act, is impermissibly vague. *People v. Bossie*, 108 Ill. 2d 236 (1985).

FISH

515 ILCS 5/5-25 (Ill. Rev. Stat. 1989, ch. 56, par. 2.4). **Fish and Aquatic Life Code.** It is a violation of due process to make it a Class 3 felony not to have a license in one's possession, or not to have a tag on a net, which are ordinarily misdemeanor offenses, for commercial fishermen who are otherwise fishing legally and taking over \$300 worth of fish. *People v. Hamm*, 149 Ill. 2d 201 (1992).

VEHICLES

625 ILCS 5/4-102 (West 1996). **Illinois Vehicle Code.** Provisions punishing unauthorized tampering with or damaging, moving, or entry of a vehicle, without requiring a criminal mental state, impose absolute liability for unintended conduct in violation of the due process guarantees of the 14th Amendment to the U.S. Constitution and Art. I, Sec. 2 of the Illinois Constitution. *In re K.C.*, 186 Ill. 2d 542 (1999).

625 ILCS 5/4-103.2 (West 2000). **Illinois Vehicle Code.** Subsection (b)'s inference that a person exercising unexplained possession of a stolen or converted automobile is presumed to know the car is stolen or converted, regardless of the remote date of its theft or conversion, violates the due process guarantee of Section 2 of Article I of the Illinois Constitution as applied to the possessor of special mobile equipment because the same extensive ownership records and procedures that justify the presumption for automobile possession do not exist for special mobile equipment. *People v. Greco*, 204 Ill. 2d 400 (2003).

625 ILCS 5/4-104 (Ill. Rev. Stat. 1987, ch. 95½, par. 4-104). **Illinois Vehicle Code.** Provision that makes it a Class 2 felony for a motor vehicle owner to alter his or her own temporary registration permit is unconstitutional (i) as a violation of due process because it was not a reasonable penalty for the crime and (ii) as a violation of the proportionate penalties requirement because altering one's own registration permit cannot

be equated with possession of a stolen motor vehicle, yet both offenses are classified as a Class 2 felony. *People v. Morris*, 136 Ill. 2d 157 (1990).

625 ILCS 5/4-209 (Ill. Rev. Stat., ch. 95½, par. 4-209). **Illinois Vehicle Code.** Provision for post-tow notice by U.S. mail to owner of impounded abandoned vehicle more than 7 years old is unconstitutional. Due process requires notice by certified mail, return receipt requested, for all vehicles. *Kohn v. Mucia*, 776 F. Supp. 348 (N.D. Ill. 1991).

625 ILCS 5/6-208.1 (P.A. 89-203). **Illinois Vehicle Code.** Provision amended by P.A. 89-203 is unconstitutional because P.A. 89-203 violates the single-subject rule of Section 8 of Article IV of the Illinois Constitution. (Although P.A. 89-203 also amended Section 11-501 of the Illinois Vehicle Code (625 ILCS 5/11-501), those changes to Section 11-501 were removed by Public Act 93-800, effective January 1, 2005.) *People v. Wooters*, 188 Ill. 2d 500 (1999). (This case is also reported in this Part 2 of this Case Report under “Counties”, “Criminal Offenses”, “Corrections”, and “Civil Procedure”.)

625 ILCS 5/8-105. Illinois Vehicle Code. Provision of 1923 motor vehicle law that surety bond of owner of motor vehicle used for transportation of passengers becomes a lien on real estate scheduled in the bond, without providing for discharge of the lien, is unconstitutional because arbitrarily discriminatory and unreasonable. The provision is continued in the Illinois Vehicle Code. *Weksler v. Collins*, 317 Ill. 132 (1925).

COURTS

705 ILCS 21/ (West 1996). **Judicial Redistricting Act of 1997.** Entire Act, enacted by P.A. 89-719, is unconstitutional because (i) provisions dividing the First Judicial District into 3 subdistricts for election of Supreme Court judges and splitting judicial circuits between 2 or more judicial districts violate Article VI of the Illinois Constitution and (ii) other provisions, despite inclusion of a severability clause, are inseverable. *Cincinnati Insurance Co. v. Chapman*, 181 Ill. 2d 65 (1997).

705 ILCS 25/1 (P.A. 89-719). **Appellate Court Act.** (See *Cincinnati Insurance Co. v. Chapman*, 181 Ill. 2d 65 (1997), reported in this Part 2 of this Case Report under “Courts”, concerning the inseverability of unconstitutional provisions of the Judicial Redistricting Act of 1997 enacted by P.A. 89-719.)

705 ILCS 205/6 (West 1992). **Attorney Act.** Provision that allows a circuit court judge to suspend an attorney from the practice of law is an unconstitutional encroachment on the Supreme Court's exclusive authority to regulate and discipline attorneys in Illinois. *In re General Order of March 15, 1993*, 258 Ill. App. 3d 13 (1st Dist. 1993).

705 ILCS 405/1-15 (West 1992). **Juvenile Court Act of 1987.** Provision that requires a lack of notice claim to be presented before the adjudicatory hearing begins is unconstitutional as an infringement of due process and interferes with the powers of reviewing courts guaranteed by the separation of powers clause. *In re C.R.H.*, 163 Ill. 2d 263 (1994).

705 ILCS 405/2-28 (West 1998). **Juvenile Court Act of 1987.** Portion of subsection (3) that grants an automatic appeal of a court order changing a child's permanency goal violates Section 6 of Article VI of the Illinois Constitution, which assigns to the Illinois Supreme Court the power to establish procedures for appealing non-final judgments. *In re Curtis B.*, 203 Ill. 2d 53 (2002), *In re D.D.H.*, 319 Ill. App. 3d 989 (5th Dist. 2001), *In re C.B.*, 322 Ill. App. 3d 1011 (4th Dist. 2001), and *In re T.B.*, 325 Ill. App. 3d 566 (3rd Dist. 2001).

705 ILCS 405/5-4, 405/5-14, 405/5-19, 405/5-23, 405/5-33, and 405/5-34 (P.A. 88-680). **Juvenile Court Act of 1987.** Provisions amended by P.A. 88-680 are unconstitutional because P.A. 88-680 violates the single-subject rule of Section 8 of Article IV of the Illinois Constitution. P.A.s 91-54, 91-155, 91-404, 91-690, 91-691, 91-692, 91-693, 91-694, 91-695, and 91-696 re-enacted portions, but not all, of the substance of P.A. 88-680. *People v. Dainty*, 299 Ill. App. 3d 235 (3rd Dist. 1998), *People v. Williams*, 302 Ill. App. 3d 975 (2nd Dist. 1999), *People v. Edwards*, 304 Ill. App. 3d 250 (2nd Dist. 1999), and *People v. Cervantes*, 189 Ill. 2d 80 (1999). (These cases are

also reported in this Part 2 of this Case Report under “Finance”, “Criminal Offenses”, and “Corrections” and in Part 3 of this Case Report under “Criminal Offenses”).

CRIMINAL OFFENSES

720 ILCS 5/8-4 (West 2000). **Criminal Code of 1961.** Subsection (c)’s enhanced penalties for attempted first degree murder with a handgun violate the proportionate penalty clause of Section 11 of Article I of the Illinois Constitution because a defendant may receive a longer sentence if the victim survives than if the victim dies. *People v. Morgan*, 203 Ill. 2d 470 (2003).

720 ILCS 5/9-1 (Ill. Rev. Stat. 1987, ch. 38, par. 9-1). **Criminal Code of 1961.** P.A. 84-1450, which amended the homicide statute, provides that “this amendatory Act of 1986 shall only apply to acts occurring on or after January 1, 1987”. Because P.A. 84-1450 does not contain an effective date provision, however, it did not take effect until July 1, 1987, and its retroactive application to January 1, 1987 is a violation of the constitutional prohibitions against *ex post facto* laws. P.A. 84-1450 may be applied only prospectively from the date it became effective, July 1, 1987. *People v. Shumpert*, 126 Ill. 2d 344 (1989).

720 ILCS 5/10-2 (West 2000). **Criminal Code of 1961.** Subsection (b), which authorizes a 15-year sentence enhancement for committing the offense of aggravated kidnapping while armed with a firearm, violates the proportionate penalties clause of Section 11 of Article I of the Illinois Constitution (ILCON Art. I, Sec. 11) because the resulting penalty is harsher than the penalty for armed violence, which contains the same elements. *People v. Baker*, 341 Ill. App. 3d 1083 (4th Dist. 2003), and *People v. Moss*, 206 Ill. 2d 503 (2003).

720 ILCS 5/10-5 (Ill. Rev. Stat. 1989, ch. 38, par. 10-5). **Criminal Code of 1961.** Child abduction statute is unconstitutional as applied to the natural father of a child. The parents were not married and there was no paternity action, but the parents had lived together 4½ years and the father had supported the child. Applying the statute to the natural father would deprive

him of equal protection of the law. *People v. Morrison*, 223 Ill. App. 3d 176 (3rd Dist. 1991).

720 ILCS 5/10-5.5 (West 1994). **Criminal Code of 1961.** The provision of the unlawful visitation interference statute prohibiting the imposition of civil contempt sanctions under the Illinois Marriage and Dissolution of Marriage Act after a conviction for unlawful visitation interference is an undue infringement on the court's inherent powers under the separation of powers provision of Article II, Section 1 of the Illinois Constitution. *People v. Warren*, 173 Ill. 2d 348 (1996).

720 ILCS 5/11-6, 5/11-6.5, and 5/32-10 (P.A. 89-203). **Criminal Code of 1961.** Provisions amended by P.A. 89-203 are unconstitutional because P.A. 89-203 violates the single-subject rule of Section 8 of Article IV of the Illinois Constitution. *People v. Wooters*, 188 Ill. 2d 500 (1999). (This case is also reported in this Part 2 of this Case Report under "Counties", "Vehicles", "Corrections", and "Civil Procedure".)

720 ILCS 5/11-20.1 (West Supp. 2001). **Criminal Code of 1961.** Clause (f)(7) of Section 11-20.1 violates the First Amendment of the U.S. Constitution by including within the definition of "child", for child pornography purposes, computer generated images of children that are not depictions of actual children. *People v. Alexander*, 204 Ill. 2d 472 (2003).

720 ILCS 5/12-1.2 and 5/24-3.1 (P.A. 88-680). **Criminal Code of 1961.** Provisions amended by P.A. 88-680 are unconstitutional because P.A. 88-680 violates the single-subject rule of Section 8 of Article IV of the Illinois Constitution. P.A.s 91-54, 91-155, 91-404, 91-690, 91-691, 91-692, 91-693, 91-694, 91-695, and 91-696 re-enacted portions, but not all, of the substance of P.A. 88-680. *People v. Dainty*, 299 Ill. App. 3d 235 (3rd Dist. 1998), *People v. Williams*, 302 Ill. App. 3d 975 (2nd Dist. 1999), *People v. Edwards*, 304 Ill. App. 3d 250 (2nd Dist. 1999), and *People v. Cervantes*, 189 Ill. 2d 80 (1999). (These cases are also reported in this Part 2 of this Case Report under "Finance", "Courts", and "Corrections" and in Part 3 of this Case Report under "Criminal Offenses".)

720 ILCS 5/12-6 (Ill. Rev. Stat. 1983, ch. 38, par. 12-6). **Criminal Code of 1961.** Provision of intimidation statute making it an offense to threaten to commit any crime no matter how minor or insubstantial is unconstitutional as being overbroad in violation of the First Amendment to the United States Constitution. *U.S. ex rel. Holder v. Circuit Court of the 17th Judicial Circuit*, 624 F. Supp. 68 (N.D. Ill. 1985).

720 ILCS 5/12-11, 5/19-3, 5/33A-1, 5/33A-2, and 5/33A-3 (West 1996). **Criminal Code of 1961.** Penalty for committing armed violence based upon residential burglary with a Category I weapon is disproportionate to the penalty for committing the more serious offense of home invasion and violates Article I, Section 11 of the Illinois Constitution. P.A. 91-404 amended the Criminal Code of 1961 and the Unified Code of Corrections to increase the penalties for armed violence involving the discharge of a firearm and for home invasion with a firearm but did not alter the penalties for armed violence based upon residential burglary with a Category I weapon (without discharge of a firearm) or for home invasion without a firearm. *People v. Lombardi*, 184 Ill. 2d 462 (1998). (This case is also reported in this Part 2 of this Case Report under “Corrections”).

720 ILCS 5/16A-4 (West 2000). **Criminal Code of 1961.** Retail theft provision that a person who conceals and removes merchandise from a retail store without paying for it “shall be presumed” to do so intentionally creates an unconstitutional mandatory presumption that denies the trier of fact the discretion of determining that an item was removed inadvertently or thoughtlessly. *People v. Taylor*, 344 Ill. App. 3d 929 (1st Dist. 2003).

720 ILCS 5/18-2 (West 2000). **Criminal Code of 1961.** Subsection (b)'s 15-year sentence enhancement for the Class X offense of armed robbery while in possession of a firearm violates the proportionate penalties requirement of Section 11 of Article I of the Illinois Constitution when compared to the more serious but less severely punishable Class X offense of armed violence predicated upon aggravated robbery. *People v. Walden*, 199 Ill. 2d 392 (2002), and *People v. Moss*, 206 Ill. 2d 503 (2003).

720 ILCS 5/18-4 (West 2000). **Criminal Code of 1961.** Provision authorizing a sentence enhancement for the offense of aggravated vehicular hijacking while in possession of a firearm, which results in a harsher penalty than the penalty for a more serious offense, violates the proportionate penalties clause of Section 11 of Article I of the Illinois Constitution (ILCON Art. I, Sec. 11). *People v. Moss*, 206 Ill. 2d 503 (2003).

720 ILCS 5/24-1.1 (West 1994). **Criminal Code of 1961.** (See *People v. Davis*, 177 Ill. 2d 495 (1997), reported in this Part 2 of this Case Report under “Corrections”, concerning the disproportionality of penalties for possession of a firearm in violation of the Firearm Owners Identification Card Act and unlawful use of a firearm by a felon.)

720 ILCS 5/25-1 (Ill. Rev. Stat., ch. 38, par. 25-1). **Criminal Code of 1961.** Provision of mob action offense that prohibits the assembly of 2 or more persons to do an unlawful act is unconstitutional for violating due process and the First Amendment because it (i) is too vague to give reasonable notice of the prohibited conduct or adjudicatory standards and (ii) is so overbroad as to allow the arbitrary suppression of non-criminal conduct. *Landry v. Daley*, 280 F. Supp. 938 (N.D. Ill. 1968).

720 ILCS 5/31A-1.1 and 5/31A-1.2 (P.A. 89-688). **Criminal Code of 1961.** Provisions amended by P.A. 89-688 are unconstitutional because P.A. 89-688 violates the single-subject rule of Section 8 of Article IV of the Illinois Constitution. (Although Public Act 89-688 also amended Section 8-1.1 of the Criminal Code of 1961 (720 ILCS 5/8-1.1), identical changes were made to that Section by Public Act 89-689, effective December 31, 1996.) *People v. Foster*, 316 Ill. App. 3d 855 (4th Dist. 2000), and *People v. Burdunice*, 211 Ill. 2d 264 (2004). (These cases are also reported in this Part 2 of this Case Report under “General Provisions”, “Criminal Procedure”, and “Corrections”.)

720 ILCS 5/33A-2 and 5/33A-3. **Criminal Code of 1961.** Penalties for armed violence predicated on certain offenses are unconstitutionally disproportionate to penalties for other offenses.

Armed violence predicated on unlawful restraint. Penalty (a Class X felony) is disproportionate to penalty for aggravated unlawful restraint (a Class 3 felony) under 720 ILCS 5/10-3.1 (West 1992). *People v. Murphy*, 261 Ill. App. 3d 1019 (2nd Dist. 1994).

Armed violence predicated on robbery committed with a category I weapon. Minimum term of imprisonment of 15 years is disproportionate to minimum term of imprisonment (6 years) for robbery committed with a handgun under 720 ILCS 5/18-2 (West 1994). *People v. Lewis*, 175 Ill. 2d 412 (1996).

Armed violence predicated on aggravated vehicular highjacking and armed robbery. Minimum term of imprisonment of 15 years is disproportionate to minimum terms of imprisonment (7 years and 6 years, respectively) for aggravated vehicular highjacking under 720 ILCS 5/18-4 (West 1994) and armed robbery under 720 ILCS 5/18-2 (West 1994). *People v. Beard*, 287 Ill. App. 3d 935 (1st Dist. 1997).

720 ILCS 5/37-4 (Ill. Rev. Stat. 1985, ch. 38, par. 37-4). **Criminal Code of 1961.** Defining as a public nuisance any building used in the sale of obscene material and permitting injunctive relief against use of a building for one year is unconstitutional in its application to adult bookstores that sell sexually explicit materials. These provisions create a system of prior restraint but do not define the length of the period during which an alleged nuisance can be restrained prior to full judicial review and make no provision for prompt final determination of the matter. *People v. Sequoia Books, Inc.*, 127 Ill. 2d 271 (1989).

720 ILCS 250/16 (West 2002). **Illinois Credit Card and Debit Card Act.** Provision that possession of 2 or more counterfeit credit or debit cards by someone other than the purported card issuer is prima facie evidence of the possessor's intent to defraud or of the possessor's knowledge that the cards are counterfeit creates an unconstitutional mandatory presumption of the intent or knowledge that is an element of a violation of the Act. *People v. Miles*, 344 Ill. App. 3d 315 (2nd Dist. 2003).

720 ILCS 510/2 and 510/11 (Ill. Rev. Stat. 1983, ch. 83, pars. 81-22 and 81-31). **Illinois Abortion Law of 1975.** Provisions making nonprescription sale of abortifacients and prescription or administration of

abortifacients without informing the recipient a misdemeanor are unconstitutional because they incorporate a definition of “fetus” in which a fetus is classified as a human being from fertilization until death and thus intrude upon the medical discretion of the attending physician and impose the State’s theory of when life begins upon the physician’s patient, impermissibly infringing upon a woman’s right of private decision-making in matters relating to contraception. *Charles v. Daley*, 749 F. 2d 452 (7th Cir. 1984).

720 ILCS 513/10. Partial-birth Abortion Ban Act. Act’s prohibition against the performance of partial-birth abortions unconstitutionally violates the Fourteenth Amendment to the U.S. Constitution because it lacks an exception for preservation of the health of the mother and unduly burdens a woman’s right to choose an abortion. *Hope Clinic v. Ryan*, 249 F. 3d 603 (7th Cir. 2001).

720 ILCS 570/315. Illinois Controlled Substances Act. Prohibition against advertising controlled substances to the public by name violates the commercial speech protection of the First Amendment and the commerce clause of Art. I, Sec. 8 of the U.S. Constitution when applied to the federally approved national advertising campaign of the developer of a Schedule IV controlled substance. *Knoll Pharmaceutical Co. v. Sherman*, 57 F. Supp. 2d 615 (N.D. Ill. 1999).

720 ILCS 590/1. Discrimination in Sale of Real Estate Act. Prohibition against person knowingly soliciting an owner of residential property to sell or list the property after the person has been given notice that the owner does not desire to be solicited unconstitutionally restricts a real estate broker’s freedom of speech. *Pearson v. Edgar*, 153 F. 3d 397 (7th Cir. 1998).

CRIMINAL PROCEDURE

725 ILCS 5/106D-1 (West 2000). Code of Criminal Procedure of 1963. Section authorizing the court to allow a defendant to personally appear at a pre-trial or post-trial proceeding via closed-circuit television violates an accused person’s right under Section 8 of Article I of the Illinois Constitution

(ILCON Art. I, Sec. 8) to appear at criminal proceedings, as applied to a defendant who appeared at his guilty plea proceeding via closed-circuit television without his written consent. *People v. Stroud*, 208 Ill. 2d 398 (2004).

725 ILCS 5/110-4 (West 2000). **Code of Criminal Procedure of 1963.** Subsection (b), which prohibits bail for a person charged with a capital offense or an offense for which a sentence of life imprisonment may be imposed until the person demonstrates at a hearing that proof of his or her guilt is not evident and presumption of his or her guilt is not great, violates the due process clauses of Section 2 of Article I of the Illinois Constitution by depriving the accused of a presumption of innocence. *People v. Purcell*, 201 Ill. 2d 542 (2002).

725 ILCS 5/110-6.2 (Ill. Rev. Stat. 1989, ch. 38, par. 110-6.2). **Code of Criminal Procedure of 1963.** Bail provision permits a court, after a hearing, to deny bail if the court determines that certain facts exist, such as proof evident or presumption great that the defendant committed the offense, the offense requires imprisonment, or the defendant poses a real threat to others. Provision is unconstitutional as a violation of the separation of powers clause of the Illinois Constitution because it limits the court's authority to set bail and imposes conditions not found in Supreme Court Rule 609 concerning bail. *People v. Williams*, 143 Ill. 2d 477 (1991).

725 ILCS 5/114-9 (Ill. Rev. Stat. 1973, ch. 38, par. 114-9). **Code of Criminal Procedure of 1963.** Subsection (c) of Section 114-9, which provides that the State is not required to include rebuttal witnesses in lists of prosecution witnesses given to the defense, is unconstitutional. Previously, Section 114-14, which required the defense to provide notice of an alibi defense to the prosecution upon request, was held unconstitutional by *People v. Fields*, 59 Ill. 2d 516 (1974). These rulings came after the U.S. Supreme Court, in *Wardius v. Oregon*, 412 U.S. 470 (1973), held that the due process clause of the 14th Amendment to the U.S. Constitution forbids enforcement of alibi disclosure rules unless the defense has reciprocal discovery rights. Subsection (c) of Section 114-9 has not been amended since these decisions. (Section 114-14 was repealed in 1979 by P.A. 81-290.) *People ex rel. Carey v. Strayhorn*, 61 Ill. 2d 85 (1975).

725 ILCS 5/115-15 (West 1998). **Code of Criminal Procedure of 1963.** Provision granting prima facie evidence status to laboratory tests of controlled substances in certain criminal prosecutions unless the defendant, within 7 days after receiving the test report, demands the testimony of the person who signed the report violates the confrontation clauses of the Sixth Amendment to the U.S. Constitution and Art. I, Sec. 8 of the Illinois Constitution. *People v. McClanahan*, 191 Ill. 2d 127 (2000).

725 ILCS 5/122-8 (Ill. Rev. Stat. 1984 Supp., ch. 38, par. 122-8). **Code of Criminal Procedure of 1963.** Provision requiring that all post-conviction proceedings be conducted by a judge who was not involved in the original proceeding that resulted in conviction violates the separation of powers clause of the Illinois Constitution and also is contrary to a Supreme Court Rule concerning judicial administration and therefore violates Article VI, Section 16 of the Illinois Constitution. *People v. Joseph*, 113 Ill. 2d 36 (1986).

725 ILCS 207/30 (West 1998). **Sexually Violent Persons Commitment Act.** Subsection (c), which prohibits a person who is the subject of a commitment petition under the Act from presenting his or her own expert testimony if the person failed to cooperate with a State-conducted evaluation but which does not prohibit the State from presenting expert testimony based upon an examination of the person's records, violates the due process guarantees of the Fourteenth Amendment to the U.S. Constitution and Section 2 of Article I of the Illinois Constitution as applied to a person against whom the State does present testimony. *In re Detention of Kortte*, 317 Ill. App. 3d 111 (2nd Dist. 2000), and *In re Detention of Trevino*, 317 Ill. App. 3d 324 (2nd Dist. 2000).

725 ILCS 207/65 (West 2000). **Sexually Violent Persons Commitment Act.** Subsection (b)(1), which prohibits a committed person from attending his probable cause hearing, violates the person's due process right under the 14th Amendment of the U.S. Constitution because the State's financial and administrative burdens are not sufficiently compelling in light of

the person's liberty interest. *People v. Botruff*, 331 Ill. App. 3d 486 (3rd Dist. 2002).

725 ILCS 240/10 (P.A. 89-688). **Violent Crime Victims Assistance Act.** Provision amended by P.A. 89-688 is unconstitutional because P.A. 89-688 violates the single-subject rule of Section 8 of Article IV of the Illinois Constitution. *People v. Foster*, 316 Ill. App. 3d 855 (4th Dist. 2000), and *People v. Burdunice*, 211 Ill. 2d 264 (2004). (These cases are also reported in this Part 2 of this Case Report under "General Provisions", "Criminal Offenses", and "Corrections".)

CORRECTIONS

730 ILCS 5/3-6-3 (Ill. Rev. Stat. 1991, ch. 38, par. 1003-6-3). **Unified Code of Corrections.** Provisions added by P.A. 88-311 making certain inmates, previously eligible to receive good-conduct credit toward early release increased by a multiplier, ineligible for the credit multiplier because they were convicted of criminal sexual assault, felony criminal sexual abuse, aggravated criminal sexual abuse, or aggravated battery with a firearm, as well as related inchoate offenses, violates the *ex post facto* provisions of Section 10 of Article I of the United States Constitution and Section 16 of Article I of the Illinois Constitution by curtailing the opportunity for an earlier release. *Barger v. Peters*, 163 Ill. 2d 357 (1994).

730 ILCS 5/3-7-2, 5/5-5-3, 5/5-6-3, 5/5-6-3.1, and 5/5-7-1 (P.A. 89-688). **Unified Code of Corrections.** Provisions amended by P.A. 89-688 are unconstitutional because P.A. 89-688 violates the single-subject rule of Section 8 of Article IV of the Illinois Constitution. (Although Public Act 89-688 also amended Sections 3-2-2, 3-5-1, 3-7-6, and 3-8-7 of the Unified Code of Corrections (730 ILCS 5/3-2-2, 5/3-5-1, 5/3-7-6, and 5/3-8-7), identical changes were made to Sections 3-2-2 and 3-5-1 by Public Act 89-689, effective December 31, 1996, Section 3-7-6 was completely rewritten by Public Act 90-85, effective July 10, 1997, and the changes to Section 3-8-7 were re-enacted by Public Act 93-272, effective July 22, 2003.) *People v. Foster*, 316 Ill. App. 3d 855 (4th Dist. 2000), and *People v. Burdunice*, 211 Ill. 2d 264 (2004). (These cases are also reported in this Part 2 of this Case Report under "General Provisions", "Criminal Offenses", and "Criminal Procedure".)

730 ILCS 5/3-10-11 (P.A. 88-680). **Unified Code of Corrections.** Provision amended by P.A. 88-680 is unconstitutional because P.A. 88-680 violates the single-subject rule of Section 8 of Article IV of the Illinois Constitution. P.A.s 91-54, 91-155, 91-404, 91-690, 91-691, 91-692, 91-693, 91-694, 91-695, and 91-696 re-enacted portions, but not all, of the substance of P.A. 88-680. *People v. Dainty*, 299 Ill. App. 3d 235 (3rd Dist. 1998), *People v. Williams*, 302 Ill. App. 3d 975 (2nd Dist. 1999) *People v. Edwards*, 304 Ill. App. 3d 250 (2nd Dist. 1999), and *People v. Cervantes*, 189 Ill. 2d 80 (1999). (These cases are also reported in this Part 2 of this Case Report under “Finance”, “Courts”, and “Criminal Offenses” and in Part 3 of this Case Report under “Criminal Offenses”.)

730 ILCS 5/5-4-1 and 5/5-8-1 (Ill. Rev. Stat. 1979, ch. 38, pars 1005-4-1 and 1005-8-1). **Unified Code of Corrections.** Two provisions providing that, in imposing a sentence for a felony conviction, a judge “shall” specify reasons for his or her sentencing determination are constitutional, as held here, when “shall” is construed in that context to be permissive rather than mandatory. By contrast, if “shall” is interpreted to reflect a mandatory intent, the provisions would unconstitutionally infringe upon the inherently separate power of the judiciary. *People v. Davis*, 93 Ill. 2d 155 (1982).

730 ILCS 5/5-5-3 (West Supp. 1995). **Unified Code of Corrections.** Designation of possession of a firearm in violation of the Firearm Owners Identification Card Act as a nonprobationable Class 3 felony, as compared to the designation of unlawful use of a firearm by a felon as a probationable Class 3 felony, violates the prohibition against disproportionate penalties in Section 11 of Article I of the Illinois Constitution. *People v. Davis*, 177 Ill. 2d 495 (1997).

730 ILCS 5/5-5-3.2 (West 1998). **Unified Code of Corrections.** Subdivision (b)(4)(i), which authorizes a sentencing court to increase the punishment for a felony based upon the victim’s age, violates the Sixth Amendment to the U.S. Constitution to the extent the jury was not

specifically charged with finding the victim's age. *People v. Thurow*, 318 Ill. App. 3d 128 (3rd Dist. 2001).

730 ILCS 5/5-5-6, 5/5-6-3.1, and 5/5-8-1 (P.A. 89-203). **Unified Code of Corrections.** Provisions amended by P.A. 89-203 are unconstitutional because P.A. 89-203 violates the single-subject rule of Section 8 of Article IV of the Illinois Constitution. *People v. Wooters*, 188 Ill. 2d 500 (1999). (This case is also reported in this Part 2 of this Case Report under "Counties", "Vehicles", "Criminal Offenses", and "Civil Procedure".)

730 ILCS 5/5-5-7 (P.A. 89-7). **Unified Code of Corrections.** (See *Best v. Taylor Machine Works*, 179 Ill. 2d 367 (1997), reported in this Part 2 of this Case Report under "Civil Procedure" and "Civil Liabilities", concerning the inseparability of unconstitutional provisions of the Code of Civil Procedure and the Joint Tortfeasor Contribution Act enacted by P.A. 89-7.)

730 ILCS 5/5-6-3.1 (Ill. Rev. Stat. 1977, ch. 38, par. 1005-6-3.1). **Unified Code of Corrections.** Provision concerning incidents and conditions of supervision that provides that a disposition of supervision is a final order for the purposes of appeal is unconstitutional and void as an attempt to regulate appellate court jurisdiction. *People v. Tarkowski*, 100 Ill. App. 3d 153 (2nd Dist. 1981).

730 ILCS 5/5-8-1 (West 1996). **Unified Code of Corrections.** Penalty for committing armed violence based upon residential burglary with a Category I weapon is disproportionate to the penalty for committing the more serious offense of home invasion and violates Article I, Section 11 of the Illinois Constitution. P.A. 91-404 amended the Criminal Code of 1961 and the Unified Code of Corrections to increase penalties for armed violence involving the discharge of a firearm and for home invasion with a firearm but did not alter the penalties for armed violence based upon residential burglary with a Category I weapon (without discharge of a firearm) or for home invasion without a firearm. *People v. Lombardi*, 184 Ill. 2d 462

(1998). (This case is also reported in this Part 2 of this Case Report under “Criminal Offenses”.)

730 ILCS 5/5-8-1 (West 1996) **Unified Code of Corrections.** Subsection (a)(1)(c)(ii), which mandates life imprisonment for multiple murder, violates the proportionate penalty clause of Section 11 of Article I of the Illinois Constitution when applied to a juvenile convicted on a theory of accountability whose only participation was to serve as lookout because the statute does not consider the defendant’s age or extent of culpability. *People v. Miller*, 202 Ill. 2d 328 (2002).

730 ILCS 140/3 (P.A. 88-680). **Private Correctional Facility Moratorium Act.** Provisions amended by P.A. 88-680 are unconstitutional because P.A. 88-680 violates the single-subject rule of Section 8 of Article IV of the Illinois Constitution. P.A.s 91-54, 91-155, 91-404, 91-690, 91-691, 91-692, 91-693, 91-694, 91-695, and 91-696 re-enacted portions, but not all, of the substance of P.A. 88-680. *People v. Dainty*, 299 Ill. App. 3d 235 (3rd Dist. 1998), *People v. Williams*, 302 Ill. App. 3d 975 (2nd Dist. 1999), *People v. Edwards*, 304 Ill. App. 3d 250 (2nd Dist. 1999), and *People v. Cervantes*, 189 Ill. 2d 80 (1999). (These cases are also reported in this Part 2 of this Case Report under “Finance”, “Courts”, and “Criminal Offenses” and in Part 3 of this Case Report under “Criminal Offenses”).

730 ILCS 175/ (P.A. 88-680). **Secure Residential Youth Care Facilities Licensing Act.** Provisions enacted by P.A. 88-680 are unconstitutional because P.A. 88-680 violates the single-subject rule of Section 8 of Article IV of the Illinois Constitution. P.A.s 91-54, 91-155, 91-404, 91-690, 91-691, 91-692, 91-693, 91-694, 91-695, and 91-696 re-enacted portions, but not all, of the substance of P.A. 88-680. *People v. Dainty*, 299 Ill. App. 3d 235 (3rd Dist. 1998), *People v. Williams*, 302 Ill. App. 3d 975 (2nd Dist. 1999), *People v. Edwards*, 304 Ill. App. 3d 250 (2nd Dist. 1999), and *People v. Cervantes*, 189 Ill. 2d 80 (1999). (These cases are also reported in this Part 2 of this Case Report under “Finance”, “Courts”, and “Criminal Offenses” and in Part 3 of this Case Report under “Criminal Offenses”).

CIVIL PROCEDURE

735 ILCS 5/2-402, 5/2-604.1, 5/2-621, 5/2-622, 5/2-623, 5/2-624, 5/2-1003, 5/2-1107.1, 5/2-1109, 5/2-1115.05, 5/2-1115.1, 5/2-1115.2, 5/2-1116, 5/2-1117, 5/2-1205.1, 5/2-1702, 5/2-2101, 5/2-2102, 5/2-2103, 5/2-2104, 5/2-2105, 5/2-2106, 5/2-2106.5, 5/2-2107, 5/2-2108, 5/2-2109, 5/8-802, 5/8-2001, 5/8-2003, 5/8-2004, 5/8-2501, 5/13-213, 5/13-214.3, and 5/13-217 (P.A. 89-7). Code of Civil Procedure.

P.A. 89-7, a comprehensive revision of the law relating to personal injury actions, is unconstitutional in its entirety because (i) provisions limiting compensatory damages for noneconomic injuries, changing contribution by joint tortfeasors, abolishing joint and several liability, and mandating unlimited disclosure of a plaintiff's medical records during discovery are arbitrary, are special legislation in violation of Section 13 of Article IV of the Illinois Constitution, or violate the separation of powers doctrine of Section 1 of Article II of the Illinois Constitution and (ii) other provisions, despite inclusion of a severability clause, are inseverable. *Best v. Taylor Machine Works*, 179 Ill. 2d 367 (1997).

735 ILCS 5/2-1003 (West 1996). Code of Civil Procedure. Provision waiving a party's privilege of confidentiality with health care providers when he or she alleges a claim for bodily injury or disease is unconstitutional because, by requiring disclosure of all information, it encroaches upon the authority of the judiciary (Supreme Court Rule 201 requires disclosure of only relevant information) and is an unreasonable invasion of privacy. *Kunkel v. Walton*, 179 Ill. 2d 519 (1997).

735 ILCS 5/3-103 (West 1994). Code of Civil Procedure. Provision allowing amendment of a complaint for administrative review of a police or firefighter disciplinary decision of a municipality of 500,000 or less population in order to add a police or fire chief as a defendant, while not allowing similar amendment of a similar complaint against a municipality of more than 500,000 population, is special legislation in violation of Section 13 of Article IV of the Illinois Constitution. *Lacny v. Police Board of the City of Chicago*, 291 Ill. App. 3d 397 (1st Dist. 1997).

735 ILCS 5/12-1006 (Ill. Rev. Stat., ch. 110, par. 12-1006). **Code of Civil Procedure.** Enforcement of judgments provisions concerning exemption for retirement plans is completely unconstitutional as preempted by the federal Bankruptcy Code. *In re Kazi, Bkrtcy*, 125 B.R. 981 (S.D. Ill. 1991), and others.

735 ILCS 5/13-202.1 (West 1992). **Code of Civil Procedure.** Limitations provision, added by P.A. 87-941, which purports to revive a damage suit by the murder victim's estate against the murderer after the 2-year statute of limitations had run, violates due process protections afforded to defendants in civil tort cases. *Sepmeyer v. Holman*, 162 Ill. 2d 249 (1994).

735 ILCS 5/15-1508 and 5/15-1701 (P.A. 89-203). **Code of Civil Procedure.** Provisions amended by P.A. 89-203 are unconstitutional because P.A. 89-203 violates the single-subject rule of Section 8 of Article IV of the Illinois Constitution. *People v. Wooters*, 188 Ill. 2d 500 (1999). (This case is also reported in this Part 2 of this Case Report under “Counties”, “Vehicles”, “Criminal Offenses”, and “Corrections”).

735 ILCS 5/20-104 (West 1998). **Code of Civil Procedure.** Section authorizing a private citizen to recover damages from someone who has defrauded a governmental unit when the appropriate governmental official has been notified and has declined to act violates Section 1 of Article II of the Illinois Constitution to the extent it purports to confer standing upon a private citizen to initiate action in a case in which the State is the real interested party because neither the legislature nor the judiciary may deprive the Attorney General of his or her inherent power to direct the legal affairs of the State. *Lyons v. Ryan*, 201 Ill. 2d 529 (2002).

735 ILCS 5/21-103 (West 1998). **Code of Civil Procedure.** Subsection (b), which requires notice by publication of a petition to change a minor's name, is unconstitutional as applied to a noncustodial parent who was not given actual notice of a petition by the custodial parent to change their child's surname. *In re Petition of Sanjuan-Moeller*, 343 Ill. App. 3d 202 (2nd Dist. 2003).

CIVIL LIABILITIES

740 ILCS 100/3.5, 100/4, and 100/5 (P.A. 89-7). Joint Tortfeasor Contribution Act. P.A. 89-7, a comprehensive revision of the law relating to personal injury actions, is unconstitutional in its entirety because (i) provisions limiting compensatory damages for noneconomic injuries, changing contribution by joint tortfeasors, abolishing joint and several liability, and mandating unlimited disclosure of a plaintiff's medical records during discovery are arbitrary, are special legislation in violation of Section 13 of Article IV of the Illinois Constitution, or violate the separation of powers doctrine of Section 1 of Article II of the Illinois Constitution and (ii) other provisions, despite inclusion of a severability clause, are inseverable. *Best v. Taylor Machine Works*, 179 Ill. 2d 367 (1997).

740 ILCS 110/9 and 110/10 (P.A. 89-7). Mental Health and Developmental Disabilities Confidentiality Act. (See *Best v. Taylor Machine Works*, 179 Ill. 2d 367 (1997), reported in this Part 2 of this Case Report under "Civil Procedure" and under "Civil Liabilities", concerning the inseverability of unconstitutional provisions of the Code of Civil Procedure and the Joint Tortfeasor Contribution Act enacted by P.A. 89-7.)

740 ILCS 110/10 (Ill. Rev. Stat. 1991, ch. 91½, par. 810). Mental Health and Developmental Disabilities Confidentiality Act. Provisions concerning what records of a patient or therapist may be disclosed is unconstitutional to the extent that the Section provides that "any order to disclose or not disclose shall be considered a final order for purposes of appeal and shall be subject to interlocutory appeal". This provision usurps the Supreme Court's rule-making power with respect to appealability of nonfinal judgments. *Almgren v. Rush-Presbyterian-St. Luke's Medical Center*, 162 Ill. 2d 205 (1994).

740 ILCS 130/2 and 130/3 (P.A. 89-7). Premises Liability Act. (See *Best v. Taylor Machine Works*, 179 Ill. 2d 367 (1997), reported in this Part 2 of this Case Report under "Civil Procedure" and under "Civil Liabilities", concerning the inseverability of unconstitutional provisions of the Code of Civil Procedure and the Joint Tortfeasor Contribution Act enacted by P.A. 89-7.)

CIVIL IMMUNITIES

745 ILCS 10/6A-101 and 10/6A-105 (P.A. 89-7). **Local Governmental and Governmental Employees Tort Immunity Act.** (See *Best v. Taylor Machine Works*, 179 Ill. 2d 367 (1997), reported in this Part 2 of this Case Report under “Civil Procedure” and under “Civil Liabilities”, concerning the inseverability of unconstitutional provisions of the Code of Civil Procedure and the Joint Tortfeasor Contribution Act enacted by P.A. 89-7.)

745 ILCS 25/2, 25/3, and 25/4 (Ill. Rev. Stat. 1967, ch. 122, pars. 822, 823, and 824). **Tort Liability of Schools Act.** Provisions concerning notice of injury and limitation period for commencing action are invalid as to both public and nonprofit private schools. Enactment of the Local Governmental and Governmental Employees Tort Immunity Act eliminated the unconstitutional discrepancy between notice-of-injury provisions applicable to various units of local government (see *Lorton v. Brown County School Dist.*, 35 Ill. 2d 362 (1966), reported in Part 3 of this Case Report under “Civil Immunities”), but because that Act does not apply to private schools, the notice and limitation provisions of the Tort Liability of Schools Act (which groups public schools and nonprofit private schools together in the same classification) could not be fairly applied to nonprofit private schools. *Cleary v. Catholic Diocese of Peoria*, 57 Ill. 2d 384 (1974).

745 ILCS 25/5 (Ill. Rev. Stat. 1959 and 1965, ch. 122, par. 825). **Tort Liability of Schools Act.** Provision of subsection (A) limiting recovery in each separate cause of action against a public school district to \$10,000 is unconstitutional because it is arbitrarily formulated. *Treece v. Shawnee Community School District*, 39 Ill. 2d 136 (1968).

Provision of subsection (B) limiting recovery in each separate cause of action against a nonprofit private school to \$10,000 is unconstitutional because it is purely arbitrary as compared with the liability of other governmental units and institutions. *Haymes v. Catholic Bishop of Chicago*, 41 Ill. 2d 336 (1968).

FAMILIES

750 ILCS 5/501.1 (West 1992). **Illinois Marriage and Dissolution of Marriage Act.** “Dissolution action stay” provision is an unconstitutional violation of substantive due process because, in providing for a stay on disposing of any property by either party in a divorce, the statute unfairly restrains the disposition of non-marital property as well as marital property. *Messenger v. Edgar*, 157 Ill. 2d 162 (1993).

750 ILCS 50/1 (West Supp. 1999). **Adoption Act.** Subsection D(h)’s “other neglect or misconduct” standard for determining a parent’s unfitness is unconstitutionally vague. *In re D.F.*, 321 Ill. App. 3d 211 (4th Dist. 2001).

750 ILCS 50/1 (West 1998). **Adoption Act.** Subdivision D(m-1)’s presumption of parental unfitness based on a judicial finding that a child has spent at least 15 of 22 consecutive months in foster care violates due process guarantees of the Fourteenth Amendment to the U.S. Constitution and Section 2 of Article I of the Illinois Constitution by failing to consider periods of foster care unattributable to the parent’s inability to care for the child. *In re H.G.*, 197 Ill. 2d 317 (2001).

750 ILCS 50/1 (West 1998). **Adoption Act.** Failure to appoint legal counsel for an indigent person for an adoption proceeding that would terminate his or her parental rights violates the equal protection guarantees of the Fourteenth Amendment to the U.S. Constitution and Section 2 of Article I of the Illinois Constitution when the State had chosen not to seek unfit parent status against an indigent woman but had achieved its goal through an adoption proceeding brought by the parties awarded custody of the child. *In re Adoption of K.L.P.*, 198 Ill. 2d 448 (2002).

BUSINESS TRANSACTIONS

815 ILCS 505/4 (Ill. Rev. Stat. 1983, ch. 121½, par. 264). **Consumer Fraud and Deceptive Business Practices Act.** Provision authorizing Attorney General to issue subpoenas is unconstitutional as applied to person compelled to travel 350-mile round trip without

reimbursement because it is arbitrary and unduly burdensome. *People v. McWhorter*, 113 Ill. 2d 374 (1986).

815 ILCS 505/10a (P.A. 87-1140 and P.A. 89-144). **Consumer Fraud and Deceptive Business Practices Act.** Subsections (a), (f), (g), and (h) constitute special legislation in violation of Section 13 of Article IV of the Illinois Constitution because they limit and restrict consumers' claims with respect only to automobile dealers (penalties for a consumer's failure to settle a claim, limitation on punitive damages, and notice to a dealer before filing suit). *Allen v. Woodfield Chevrolet, Inc.*, 208 Ill. 2d 12 (2003).

815 ILCS 505/10b (P.A. 89-7). **Consumer Fraud and Deceptive Business Practices Act.** (See *Best v. Taylor Machine Works*, 179 Ill. 2d 367 (1997), reported in this Part 2 of this Case Report under "Civil Procedure" and under "Civil Liabilities", concerning the inseparability of unconstitutional provisions of the Code of Civil Procedure and the Joint Tortfeasor Contribution Act enacted by P.A. 89-7.)

815 ILCS 515/3 (West 1994). **Home Repair Fraud Act.** The statute creates a mandatory rebuttable presumption of intent or knowledge upon the finding of certain predicate facts. The presumption relieves the State of the burden of persuasion on the element of intent or knowledge in violation of due process guarantees of the U.S. and Illinois constitutions. *People v. Watts*, 181 Ill. 2d 133 (1998).

EMPLOYMENT

820 ILCS 10/1 **Collective Bargaining Successor Employer Act.** Act is preempted by the federal Labor Management Relations Act and the National Labor Relations Act and therefore violates the supremacy clause of the U.S. Constitution. *Commonwealth Edison Co. v. International Brotherhood of Electrical Workers*, 961 F. Supp. 1169 (N.D. Ill. 1997).

820 ILCS 135/2.1 and 135/2.2 (P.A. 87-1174). **Burial Rights Act.** Provisions concerning religiously required interments during labor disputes are preempted by the federal National Labor Relations Act because they

infringe on the right of cemetery workers to strike and authorize injunctions and fines against striking unions. *Cannon v. Edgar*, 33 F. 3d 880 (7th Cir. 1994).

820 ILCS 240/2 (Ill. Rev. Stat. 1953, ch. 48, par. 252). **Industrial Home Work Act.** Provision prohibiting the processing of metal springs by home workers is unconstitutional as an unreasonable restraint on and regulation of business, not being in the interest of the public welfare as required for the proper exercise of the State's police power. *Figura v. Cummins*, 4 Ill. 2d 44 (1954).

820 ILCS 305/5 (P.A. 89-7). **Workers' Compensation Act.** (See *Best v. Taylor Machine Works*, 179 Ill. 2d 367 (1997), reported in this Part 2 of this Case Report under "Civil Procedure" and under "Civil Liabilities", concerning the inseverability of unconstitutional provisions of the Code of Civil Procedure and the Joint Tortfeasor Contribution Act enacted by P.A. 89-7.)

820 ILCS 310/5 (P.A. 89-7). **Workers' Occupational Diseases Act.** (See *Best v. Taylor Machine Works*, 179 Ill. 2d 367 (1997), reported in this Part 2 of this Case Report under "Civil Procedure" and under "Civil Liabilities", concerning the inseverability of unconstitutional provisions of the Code of Civil Procedure and the Joint Tortfeasor Contribution Act enacted by P.A. 89-7.)

820 ILCS 405/602 (Ill. Rev. Stat. 1981, ch. 48, par. 602). **Unemployment Insurance Act.** The "held in abeyance" provision of paragraph B, which postpones payment of unemployment benefits to people in legal custody or on bail for a work-related felony or theft until the charges are resolved, violates the supremacy clause of the United States Constitution because the provision conflicts with sections of the federal Social Security Act that require administrative methods "reasonably calculated" to ensure prompt payment and an opportunity for a fair hearing for individuals whose claims for unemployment compensation are denied. *Jenkins v. Bowling*, 691 F.2d 1225 (7th Cir. 1982).

INTRODUCTION TO PART 3

Part 3 of this 2004 Case Report contains Illinois statutes that are representative of (i) statutes that were held unconstitutional and then changed in response to the holding of unconstitutionality or (ii) statutes that were construed in a particular way in order to avoid a holding of unconstitutionality. Part 3 does not include every such statute. Part 3 includes statutes that (i) currently appear or formerly appeared in the Illinois Compiled Statutes or appeared in an Act that was replaced by an Act that currently appears in the Illinois Compiled Statutes and (ii) may have some instructional value concerning the requirement that statutes not violate the United States Constitution or the Illinois Constitution.

PART 3
EXAMPLES OF
STATUTES HELD UNCONSTITUTIONAL
AND THEN AMENDED OR REPEALED

GENERAL PROVISIONS

5 ILCS 420/4A-106 (Ill. Rev. Stat. 1971 Supp., ch. 127, par. 604A-106). **Illinois Governmental Ethics Act.** Provisions of Act authorizing the Secretary of State to render advisory opinions on questions concerning the Article of the Act relating to the disclosure of economic interests and to hire legal counsel for those purposes were unconstitutional because they encroached upon duties and powers of the Attorney General that are inherent in that office under Article V, Section 15 of the Illinois Constitution. The unconstitutional provisions were subsequently deleted by P.A. 78-255. *Stein v. Howlett*, 52 Ill. 2d 570 (1972).

ELECTIONS

10 ILCS 5/1A-3, 5/1A-5, and 5/1A-7.1 (Ill. Rev. Stat. 1973, ch. 46, pars. 1A-3, 1A-5, and 1A-7.1). **Election Code.** Method used to select members of State Board of Elections, involving appointments by the Governor from nominees designated by the General Assembly, violated Illinois Constitution prohibition against legislative appointment of executive branch officers. Method used to resolve a tie vote of the State Board of Elections, involving disqualification of one Board member whose name was selected by lot, violated due process and the Illinois Constitution prohibition against a political party having a majority of members of the Board. P.A. 80-1178 deleted the provisions concerning legislative nominees for Board membership and repealed the provision concerning resolution of a tie vote. *Walker v. State Board of Elections*, 65 Ill. 2d 543 (1976).

10 ILCS 5/7-5 and 5/7-12 (Ill. Rev. Stat., ch. 46, pars. 7-5 and 7-12). **Election Code.** Provisions directing that no primary election be held if, for each office to be filled by election, the election would be uncontested were unconstitutional because they violated the equal protection clause by preventing electors from voting for write-in candidates. P.A. 84-698

amended the provisions to provide that a primary election shall be held when a person who intends to become a write-in candidate for an uncontested office files a written statement or notice of intent with the proper election official. *Lawlor v. Chicago Board of Election Com'rs*, 395 F. Supp. 692 (N.D. Ill. 1975).

10 ILCS 5/7-10 (Ill. Rev. Stat. 1971, ch. 46, par. 7-10). **Election Code.** Provisions prohibiting a person from signing a nominating petition or being a candidate of a political party for public office if the person had requested a primary ballot of another political party at a primary election held within 2 years of the date on which the nominating petition must be filed were held to violate the right of free political association under the U.S. Constitution, Amendments I and XIV. Standards governing party changes by candidates may and should be more restrictive than those relating to voters generally, but the restrictions on candidates were not severable from the invalid provisions. P.A. 86-1348 deleted the 2-year restriction on changes of party by persons signing nominating petitions and by candidates. *Sperling v. County Officers Electoral Board*, 57 Ill. 2d 81 (1974).

10 ILCS 5/7-10 (Ill. Rev. Stat., ch. 46, par. 7-10). **Election Code.** (See *People ex rel. Chicago Bar Ass'n v. State Bd. of Elections*, 136 Ill. 2d 513 (1990), reported in this Part 3 of this Case Report under "Courts", concerning legislation subdividing the First Appellate District and the Circuit of Cook County.)

10 ILCS 5/7-42 (Laws 1910 Sp. Sess., p. 50). **Election Code.** Provision of 1910 Act that allowed an employee to leave work for 2 hours without any deduction in salary or wages to vote in a primary election was unconstitutional because it deprived an employer of his or her property without due process. The provision prohibiting a deduction in salary or wages was not continued in the 1927 Act that replaced the 1910 Act, and the current Election Code does not contain such a provision. *McAlpine v. Dimick*, 326 Ill. 240 (1927).

10 ILCS 5/7-59 (Ill. Rev. Stat., ch. 46, par. 7-59). **Election Code.** Provision excluding from office a write-in candidate in a primary election

who received a majority of the votes cast because he or she did not receive at least as many write-in votes as the number of signatures required on a petition for nomination for that office was an unconstitutional violation of the right to freedom of association as expressed by voting. P.A. 84-658 and P.A. 86-867 changed the statute to bar from office only a write-in candidate in a primary election who receives less votes than any person on the ballot. *Foster v. Kusper*, 587 F. Supp. 1194 (N.D. Ill. 1984).

10 ILCS 5/8-10. Election Code. Provision granting incumbents priority in ballot positions violated the 14th Amendment to U.S. Constitution. A subsequent amendment completely removed the offending provision. *Netsch v. Lewis*, 344 F. Supp. 1280 (N.D. Ill. 1972).

10 ILCS 5/10-3 (Ill. Ann. Stat. 1978 Supp., ch. 46, par. 10-3). **Election Code.** Provision requiring more than 25,000 petition signatures for an independent candidate for less than statewide office, when 25,000 was the number needed for statewide office, was unconstitutional as a violation of the 14th Amendment to the U.S. Constitution. P.A. 81-926 lowered the number of signatures needed. *Socialist Workers Party v. Chicago Board of Election Commissioners*, 99 S. Ct. 983 (1977).

10 ILCS 5/17-15 (Hurd's Statutes 1917, p. 1350). **Election Code.** Provision that required employers to pay employees for the 2 hours employers were required to allow employees to be absent from work to vote on election day was void as an unreasonable abridgment of the right to contract for labor. Although a citizen has a constitutional right to vote, he or she does not have a constitutional right to be paid to exercise the right to vote. The requirement to pay employees during their absence while voting was removed by Laws 1963, p. 2532. *People v. Chicago, Milwaukee and St. Paul Railway Co.*, 306 Ill. 486 (1923).

10 ILCS 5/23-1.4 and 5/23-1.10 (Ill. Rev. Stat. 1981, ch. 46, pars. 23-1.4 and 23-1.10). **Election Code.** Provisions granting a 3-judge panel authority to hear election contests violated the Illinois Constitution because it altered the basic character of the circuit courts by creating a new court.

P.A. 86-873 repealed the offending provisions. *In re Contest of Election for Governor*, 93 Ill. 2d 463 (1983).

10 ILCS 5/25-11 (Ill. Rev Stat. 1973, ch. 46, par. 25-11). **Election Code.** Provision added by P.A. 79-118 for filling vacancies on the county board and in other county offices that transferred the authority to fill the vacancies from the county board to the county central committee of the political party of the person creating the vacancy was an unconstitutional delegation of power because the power to appoint was delegated to private citizens not accountable to the public. P.A. 80-940 changed the provision to provide that vacancies shall be filled by appointment by the county board chairman with the advice and consent of the county board. *People ex rel. Rudman v. Rini*, 64 Ill. 2d 321 (1976).

10 ILCS 5/29-14 (Ill. Rev. Stat. 1983, ch. 46, par. 29-14). **Election Code.** Provision that prohibited publication of unattributed political literature was a violation of the First Amendment. P.A. 90-737 repealed Section 29-14 but replaced it with Section 9-9.5 (10 ILCS 5/9-9.5), a similar prohibition against publication and distribution of unattributed political literature. *People v. White*, 116 Ill. 2d 171 (1987).

EXECUTIVE BRANCH

20 ILCS 3505/. Illinois Development Finance Authority Act. Provision of a former Act, the Illinois Industrial Development Authority Act, that required \$500,000 to be transferred to a special fund and that the sum should be considered “always appropriated” for the purpose of guaranteeing repayment of bonds violated the constitutional prohibition against pledging the credit of the State and was an unconstitutional continuing appropriation. P.A. 81-454 repealed the Illinois Industrial Development Authority Act and enacted what became the Illinois Development Finance Authority Act without continuing the offending provision in the new Act. *Bowes v. Howlett*, 24 Ill.2d 545 (1962).

REVENUE

35 ILCS 105/2 (Ill. Rev. Stat. 1985, ch. 120, par. 439.2). **Use Tax Act.**

35 ILCS 120/1 (Ill. Rev. Stat. 1985, ch. 120, par. 440). **Retailers' Occupation Tax Act.** Provisions that persons in the business of repairing items of personal property by adding or incorporating other items of personal property shall be deemed to be in the business of selling personal property at retail and not in a service occupation violated the uniformity of taxation provisions of the Illinois Constitution because they attempted to include within a class persons who in fact were not within the class. Laws 1963, pages 1582 and 1600 deleted the offending provisions. *Central Television Service v. Isaacs*, 27 Ill. 2d 420 (1963).

35 ILCS 105/3-5 (Ill. Rev. Stat. 1985, ch. 120, par. 439.3). **Use Tax Act.**

35 ILCS 120/2-5 (Ill. Rev. Stat. 1985, ch. 120, par. 441). **Retailers' Occupation Tax Act.**

Provisions that exempted from use tax and retailers' occupation tax all money and medallions issued by a foreign government except those issued by South Africa were unconstitutional because the disapproval of foreign political and social policies was not a reasonable basis for a tax classification and the power to conduct foreign affairs belonged exclusively to the federal government. The offending provisions were subsequently removed by P.A. 85-1135. *Springfield Rare Coin Gallery v. Johnson*, 115 Ill. 2d 221 (1986).

Provisions that made proceeds of sales to the State or local governmental units exempt from use tax and retailers' occupation tax violated the uniformity of taxation requirement of the Illinois Constitution because they discriminated against the federal government. Laws 1961, pages 2312 and 2314 deleted the offending provisions. *People ex rel. Holland Coal Co. v. Isaacs*, 22 Ill. 2d 477 (1961).

35 ILCS 105/3-40 (Ill. Rev. Stat. 1985, ch. 120, par. 439.3). **Use Tax Act.** Definition of gasohol, which applied to the Retailers' Occupation Tax Act as well, that provided for a sales tax preference to gasohol containing ethanol distilled in Illinois violated the commerce clause. The preference was deleted by P.A. 85-1135. *Russell Stewart Oil Co. v. State*, 124 Ill. 2d 116 (1988).

35 ILCS 110/2 (Ill. Rev. Stat. 1967, ch. 120, par. 439.32). **Service Use Tax Act.**

35 ILCS 115/2 (Ill. Rev. Stat. 1967, ch. 120, par. 439.102). **Service Occupation Tax Act.**

1967 amendments, which designated 4 limited subclasses of servicemen who were subject to the tax, were an unconstitutional denial of due process and equal protection because there was no reasonable difference between the 4 subclasses of servicemen subject to the tax and those servicemen not subject to the tax. Several Sections in each Act were held unconstitutional because the court found the provisions of the amendatory Acts inseverable. Subsequent amendments corrected the problem. *Fiorito v. Jones*, 39 Ill. 2d 531 (1968).

35 ILCS 120/5a, 120/5b, and 120/5c (Ill. Rev. Stat. 1961, ch. 120, pars. 444a, 444b, and 444c). **Retailers' Occupation Tax Act.** Provisions (i) permitting the Department of Revenue to file with the circuit clerk a final assessment or jeopardy assessment and requiring the clerk to immediately enter judgment for that amount and (ii) affording the taxpayer an opportunity to be heard only after entry of the judgment violated due process and attempted to circumvent the courts in violation of the separation of powers clause of the Illinois Constitution. Subsequent amendments corrected the problem. *People ex rel. Isaacs v. Johnson*, 26 Ill. 2d 268 (1962).

35 ILCS 130/1 (Ill. Rev. Stat. 1947, ch. 120, par. 453.1). **Cigarette Tax Act.** Provision that an individual who in any year brought more than 10 cartons of cigarettes into the State for consumption was a “distributor” of cigarettes was unconstitutional as violative of due process and the commerce clause of the U.S. Constitution. The definition of “distributor” was subsequently changed to remove the unconstitutional text. *Johnson v. Daley*, 403 Ill. 338 (1949).

35 ILCS 200/9-185. Property Tax Code. Provision of prior Act (Ill. Rev. Stat. 1965, ch. 120, par. 508a) that indirectly required the owner of real property taken by eminent domain to pay the real estate taxes for the period after the petition for condemnation was filed until the compensation award was deposited was an unconstitutional taking of property without compensation. The Property Tax Code, which succeeded the repealed Revenue Act of 1939, now provides that real property is exempt from taxation

as of the date the condemnation petition is filed. *Board of Jr. College District 504 v. Carey*, 43 Ill. 2d 82 (1969).

35 ILCS 200/15-85. Property Tax Code.

Tax exemption for property used for “mechanical” purposes (Ill. Rev. Stat. 1983, ch. 120, par. 500.10) was unconstitutional because it exceeded the scope of exemptions permitted under Article IX, Section 6 of the Illinois Constitution. P.A. 88-455 repealed the Revenue Act of 1939 and replaced it with the Property Tax Code, and the offending provision was not continued in the Code. *Bd. of Certified Safety Professionals of the Americas, Inc. v. Johnson*, 112 Ill. 2d 542 (1986).

Tax exemption for property used for “philosophical” purposes (Ill. Rev. Stat. 1953, ch. 120, par. 500) was unconstitutional because it exceeded the scope of exemptions permitted under the Illinois Constitution. P.A. 88-455 repealed the Revenue Act of 1939 and replaced it with the Property Tax Code, and the offending provision was not continued in the Code. *International College of Surgeons v. Brenza*, 8 Ill. 2d 141 (1956).

PENSIONS

40 ILCS 5/6-210.1 (Ill. Rev. Stat. 1989, ch. 108 ½, par. 6-210.1). **Illinois Pension Code.** Requiring Chicago fire department paramedics transferred from Chicago municipal pension fund to Chicago firemen’s fund to tender refunds from the Chicago municipal fund, plus interest, to Chicago firemen’s fund in order to retain service credits diminished vested pension rights of paramedics unable to produce refund money plus interest and violated the Illinois Constitution’s prohibition against diminishing pension rights. P.A. 89-136 amended Section 6-210.1 to permit payment of refunds plus interest through payroll deductions. *Collins v. Board of Trustees of Firemen’s Annuity and Benefit Fund of Chicago*, 226 Ill. App. 3d 316 (1st Dist. 1992).

40 ILCS 5/18-125 (Ill. Rev. Stat. 1981, ch. 108½, par. 18-125). **Illinois Pension Code.** Amendment of Judicial Article provision that changed the definition of salary base used to compute retirement benefits from the salary on the last day of service to the average salary over the last year of service unconstitutionally reduced or impaired retirement benefits of

judges in service on or before effective date of amendment. P.A. 86-273 rewrote the provision to define “final average salary” according to the date of termination of service. *Felt v. Board of Trustees of Judges Retirement System*, 107 Ill. 2d 158 (1985).

COUNTIES

(See *People ex rel. Rudman v. Rini*, 64 Ill. 2d 321 (1976), reported in this Part 3 of this Case Report under “Elections”, in relation to filling vacancies on the county board and in other county offices.)

55 ILCS 5/4-5001. Counties Code. Provision of predecessor Act (Ill. Rev. Stat. 1979, ch. 53, par. 37) in relation to compensation of sheriffs and other county officers that allowed the sheriff of a first or second class county a percentage commission on all sales of real and personal property made by virtue of a court judgment violated the Illinois Constitution prohibition against basing fees of local governmental officers on funds collected. P.A. 82-204 replaced the percentage commission provisions with a schedule of fees in dollar amounts. *Cardinal Savings & Loan Ass’n v. Kramer*, 99 Ill. 2d 334 (1984).

55 ILCS 5/4-12001. Counties Code. Provision of predecessor Act (Ill. Rev. Stat. 1977, ch. 53, par. 71) in relation to compensation of sheriffs and other county officers that allowed the sheriff of a third class county a percentage commission on all sales of real and personal property made by virtue of an execution or a court judgment violated the Illinois Constitution prohibition against basing fees of local governmental officers on funds collected. P.A. 81-473 replaced the percentage commission provisions with a schedule of fees in dollar amounts. *DeBruyn v. Elrod*, 84 Ill. 2d 128 (1981).

55 ILCS 5/4-12003. Counties Code. Successive amendments to predecessor Act (Ill. Rev. Stat. 1983, ch. 53, par. 73; now Section 4-12003 of the Counties Code), which increased the fee for issuance of a marriage license to \$25 from \$15 and thereafter to \$40 from \$25 and which required the county clerk who collected the fee to pay the amount of the increase into the Domestic Violence Shelter and Service Fund for use in funding the

administration of domestic violence shelters and service programs, violated the due process guarantees of Article I, Section 2 of the Illinois Constitution because the increased portion of the fee (i) constituted an arbitrary tax on the issuance of marriage licenses that bore no reasonable relation to the public interest in sheltering and serving victims of domestic violence and (ii) imposed a direct impediment to the exercise of the fundamental right to marry without supporting a sufficiently important State interest warranting that intrusion. P.A. 84-180 deleted the unconstitutional provisions from the Section that is now Section 4-12003 of the Counties Code, as well as identical provisions (affecting counties of the first and second class) that formerly were contained in a section of the law that is now Section 4-4001 of the Counties Code. *Boynton v. Kusper*, 112 Ill. 2d 356 (1986).

55 ILCS 5/5-1002. Counties Code. Provision of predecessor Act (Ill. Rev. Stat. 1963, ch. 34, par. 301.1) immunizing counties from liability for personal injuries, property damage, and death caused by the negligence of its agents was a violation of the Illinois Constitution prohibition against special legislation because it made legislative classifications based on the form of a governmental unit instead of making the classifications based on the similarity of functions. The provision was repealed by Laws 1967, p. 3786. *Hutchings v. Kraject*, 34 Ill. 2d 379 (1966).

MUNICIPALITIES

65 ILCS 5/11-13-3. Illinois Municipal Code. Provision of predecessor Zoning Act authorizing a local zoning board of appeals to vary or modify application of zoning regulations or provisions of zoning ordinances in the case of “practical difficulties” or “unnecessary hardships” was an unconstitutional delegation of legislative authority because the statute offered no guidance to the board in determining what constituted practical difficulties or unnecessary hardships. Laws 1933, p. 288 deleted the offending provision. *Welton v. Hamilton*, 344 Ill. 82 (1931).

65 ILCS 5/11-31-1 (Ill. Rev. Stat. 1971, ch. 24, par. 11-31-1). **Illinois Municipal Code.** Provision that excepted home rule units from the application of a power granted to certain county boards to demolish hazardous buildings was unconstitutional special legislation because the

legislative classification did not provide a reasonable basis for differentiating between the types of governmental units that could benefit from the application of the demolition powers. The provision was subsequently removed by P.A. 84-1102. *City of Urbana v. Houser*, 67 Ill.2d 268 (1977).

SPECIAL DISTRICTS

70 ILCS 915/6 (Ill. Rev. Stat. 1981, ch. 111½, par. 5009). **Medical Center District Act.** Provision authorizing the Medical Center Commission to conduct a hearing and make a finding as to whether restrictions on property use had been violated so as to cause property to revert to the Commission was an unconstitutional violation of due process because the Commission had an interest in the outcome of the proceeding. P.A. 83-858 changed the provision to provide that the Commission must file suit for a determination of whether the property should revert to it. *United Church of the Medical Center v. Medical Center Commission*, 689 F. 2d 693 (7th Cir. 1982).

70 ILCS 2205/1, 2205/5, 2205/7, 2205/8, 2205/17, 2205/27b, 2205/27c, 2205/27d, 2205/27e, 2205/27f, and 2205/27g (Ill. Rev. Stat. 1973 Supp., ch. 42, pars. 247, 251, 253, 254, 263, 273b, 273c, 273d, 273e, 273f, and 273g). **Sanitary District Act of 1907.** P.A. 77-2819 (i) added Sections 27b through 27g to the Act to provide that a sanitary district lying in 2 counties and having an equalized assessed valuation of \$100,000,000 or more on the effective date of the amendatory Act was divided “for more effective administrative and fiscal control” into 2 separate districts and (ii) made related changes in other Sections of the Act. P.A. 77-2819 was unconstitutional special legislation because there was no reason for not extending the same advantages of “more effective administrative and fiscal control” to those 2-county districts that reached the minimum valuation level at a time after the effective date of the amendatory Act. Sections 27b through 27g were repealed by P.A. 81-290, and the related provisions added to other Sections of the Act by P.A. 77-2819 were subsequently deleted. *People ex rel. East Side Levee and Sanitary District v. Madison County Levee and Sanitary District*, 54 Ill. 442 (1973).

SCHOOLS

105 ILCS 5/7-7 (Ill. Rev. Stat. 1961, ch. 122, par. 7-7). **School Code.** Provision of the School Code requiring that an appeal from an

administrative decision of a county board of school trustees had to be filed within 10 days after the date of service of a copy of the board's decision, while all other administrative review actions under the Code had to be filed within 35 days, violated the Illinois Constitution because there was no reasonable basis for the distinction. The period was changed to 35 days by Laws 1963, p. 3041. *Board of Education of Gardner School District v. County Board of School Trustees of Peoria County*, 28 Ill. 2d 15 (1963).

105 ILCS 5/14-7.02 (Ill. Rev. Stat. 1977, ch. 122, par. 14-7.02). **School Code.** Provision that the school district in which a handicapped child resided must pay the actual cost of tuition charged the child by a non-public school or special education facility to which the child was referred or \$2,500, whichever was less, deprived the child of a tuition-free education through the secondary level in violation of Section 1 of Article X of the Illinois Constitution. P.A. 80-1405 amended the statute to increase the dollar limit to \$4,500 and to provide for the school district's payment of costs in excess of that amount if approved by the Governor's Purchased Care Review Board. *Elliot v. Board of Education of the City of Chicago*, 64 Ill. App. 3d 229 (1st Dist. 1978).

105 ILCS 5/17-2.11a (P.A. 86-4, amending Ill. Rev. Stat. 1987, ch. 122, par. 17-2.11a). **School Code.** After the appellate court interpreted a provision concerning the maximum allowable interest rate on school bonds, P.A. 86-4 amended that provision to retroactively provide for a maximum rate greater than that construed by the appellate court. The amendment violated the separation of powers principle of the Illinois Constitution. The legislature may prospectively change a judicial construction of a statute if it believes that the judicial interpretation was at odds with the legislative intent, but it may not effect a change in the judicial construction by a later declaration of what it had originally intended. (The legislature also may pass a curative Act to validate bonds that a court has found were issued in a manner not authorized by the legislature.) P.A. 87-984 repealed Section 17-2.11a. *Bates v. Bd. of Education*, 136 Ill. 2d 260 (1990).

105 ILCS 5/Art. 34 (Ill. Rev. Stat. 1989, ch. 122, par. 34-1.01 *et seq.*). **School Code.** 1988 amendments concerning Chicago school reform were unconstitutional because the voting scheme for the election of the local school

councils violated equal protection guarantees (one-person-one-vote principles). Subsequent amendments corrected the voting scheme problem and were upheld in federal court. *Fumarolo v. Chicago Board of Education*, 142 Ill. 2d 54 (1990).

HIGHER EDUCATION

110 ILCS 947/105. Higher Education Student Assistance Act. Provision of predecessor Act (Ill. Rev. Stat. 1987, ch. 122, par. 30-15.12) requiring the Illinois State Scholarship Commission (the predecessor of the Illinois Student Assistance Commission) to file all lawsuits on delinquent and defaulted student loans "in the County of Cook where venue shall be deemed to be proper" was so arbitrary and unreasonable as to deprive defendants of their property or liberty in violation of the due process guarantees of the U.S. and Illinois constitutions. The provision was amended by P.A. 86-1474, which added language authorizing a defendant to request and a court to grant a change of venue to the county of defendant's residence and requiring the Commission to move the court for a change of venue if a defendant, within 30 days of service of summons, files a written request by mail with the Commission to change venue. *Williams v. Ill. State Scholarship Comm'n*, 139 Ill. 2d 24 (1990).

110 ILCS 1015/17 (Ill. Rev. Stat. 1969, ch. 144, par. 1317). **Illinois Educational Facilities Authority Act.** Provision that authorized political subdivisions to loan public money to finance construction for religious educational institutions was unconstitutional because it created too much potential for a subdivision's excessive entanglement with religion. P.A. 78-399 removed the unconstitutional provision. *Cecrle v. Educational Facilities Authority*, 52 Ill. 2d 312 (1972).

FINANCIAL REGULATION

205 ILCS 405/1 (Ill. Rev. Stat. 1955, ch. 16½, par. 31). **Currency Exchange Act.** Provision that exempted American Express Co. money orders from the regulation of the Act was an unconstitutional violation of equal protection guarantees. The provision was deleted by Laws 1957, p. 2332. *Morey v. Doud*, 77 S. Ct. 1344 (1957).

205 ILCS 405/4. Currency Exchange Act. Provision of a predecessor Act required that an application for a license to do business as a community currency exchange contain certain specified information and “such other information as the Auditor [of Public Accounts] may require”. The provision was unconstitutionally vague because it did not prescribe the actual qualifications necessary for licensure and left the Auditor without any restraint in interpreting the phrase. The current Act does not contain the offending provision. *McDougall v. Lueder*, 389 Ill. 141 (1945).

205 ILCS 645/3 (Ill. Rev. Stat. 1985, ch. 17, par. 2710). **Foreign Banking Office Act.** Provision that imposed an annual nonreciprocal license fee of \$50,000 on foreign banks that did not provide reciprocal licensing authority to Illinois State or national banks violated the supremacy clause of the U.S. Constitution because it conflicted with the federal International Banking Act and the National Bank Act. P.A. 88-271 deleted the nonreciprocal license fee provision. *National Commercial Banking Corp. of Australia v. Harris*, 125 Ill. 2d 448 (1988).

INSURANCE

215 ILCS 5/. Illinois Insurance Code. Former Section 401a of the Code (Ill. Rev. Stat. 1975, ch. 73, par. 1013a) regulating medical malpractice insurance rates on policies in existence on a certain date but not on policies written after that date was unconstitutional special legislation because it was as important to regulate the initial rate for a new medical malpractice insurance policy as to regulate the rate for an existing policy. P.A. 81-288 repealed the Section. *Wright v. Central DuPage Hospital Ass’n*, 63 Ill. 2d 313 (1976). (This case is also reported in this Part 3 of this Case Report under “Civil Procedure”.)

215 ILCS 5/409 (West 1992). **Illinois Insurance Code.** Premium-based tax imposed upon foreign insurance companies for the privilege of doing business in Illinois but not imposed upon similar companies incorporated in Illinois violated the uniformity of taxation clause of Section 2 of Article IX of the Illinois Constitution. P.A. 90-583 imposes the premium-based privilege tax upon all companies doing business in Illinois regardless of where incorporated. *Milwaukee Safeguard Insurance v. Selcke*, 179 Ill. 2d 94 (1997).

215 ILCS 5/Art. XXXV (repealed) (Ill. Rev. Stat. 1971, ch. 73, pars. 1065.150 through 1065.163). **Illinois Insurance Code.** Provisions of former Article XXXV of the Code were unconstitutional. Provision limiting damages recoverable in actions for accidental injuries arising out of use of motor vehicles but requiring that only insurance policies for private passenger automobiles must provide coverage affording benefits to certain injured persons was impermissible special legislation because it resulted in different legislative treatment of persons injured by different vehicles. Provision requiring arbitration of certain cases arising out of auto accidents violated constitutional right to trial by jury. Provision for *de novo* review of arbitration award by the circuit court violated constitutional provision that circuit courts have original jurisdiction of all justiciable matters and the power to review administrative actions as provided by law. Provision requiring losing litigant in compulsory arbitration to pay arbitrator's fees violated constitutional prohibition against fee officers in the judicial system. P.A. 78-1297 repealed Article XXXV. *Grace v. Howlett*, 51 Ill. 2d 478 (1972).

UTILITIES

220 ILCS 10/9 (Ill. Rev. Stat. 1985, ch. 111 2/3, par. 909). **Citizens Utility Board Act.** Provisions requiring a utility to include in its billing statements information provided by the Citizens Utility Board with which the utility disagreed infringed upon the utility's freedom of speech in violation of the U.S. Constitution, Amendment I. P.A. 85-879 replaced the entire Section with provisions requiring State agencies to include in their mailings information furnished by the Citizens Utility Board. *Central Illinois Light Co. v. Citizens Utility Bd.*, 827 F. 2d 1169 (7th Cir. 1987).

PROFESSIONS AND OCCUPATIONS

225 ILCS 41/. Funeral Directors and Embalmers Licensing Code. Provision of the Funeral Directors and Embalmers Licensing Act of 1935 (Ill. Rev. Stat. 1955, ch. 111 ½, par. 73.4) requiring a funeral director to be a holder of a certificate of registration as a registered embalmer violated the due process clause of the Illinois Constitution because the interest of the public did not justify the partial merger of their activities by requiring that a funeral director have the knowledge, skill, and training of an embalmer

before he or she can direct a funeral. The provision was deleted by Laws 1959, p.1518. The 1935 Act was repealed by P.A. 87-966, which created the Funeral Directors and Embalmers Licensing Code. Article 10 of the new Code (225 ILCS 41/Art. 10) creates a combined funeral director and embalmer license. *Gholson v. Engle*, 9 Ill. 2d 454 (1956).

225 ILCS 100/21. Illinois Podiatric Medical Practice Act of 1987. Provision that limited advertising by a podiatric physician to certifications approved by the Council on Podiatric Medical Education violated the First Amendment of the U.S. Constitution as applied to a podiatric physician who advertised that he had been certified by a board other than the Council on Podiatric Medical Education if the physician's statements were not actually or potentially misleading and served the public interest and the certification originated from a bona fide certifying board. P.A. 90-76 changed the provision to limit advertising to certifications approved by the Podiatric Medical Licensing Board in accordance with the rules for the administration of the Act. *Tsatsos v. Zollar*, 943 F. Supp. 945 (N.D. Ill. 1996).

225 ILCS 446/75 (225 ILCS 445/14 (West 1992)). Private Detective, Private Alarm, Private Security, and Locksmith Act of 1993. Provision that required an applicant for a private alarm contracting license to have worked as a full-time supervisor, manager, or administrator at a licensed private alarm contracting agency for 3 years out of the 5 years immediately preceding the application for a license was invalid because it conferred upon the regulated industry monopolistic control over entry into the private alarm contracting trade. P.A. 88-363 recodified the Act and added a provision that 3 years of work experience at an unlicensed entity which satisfies standards of alarm industry competence shall meet the requirements for eligibility for licensing as an alternative to working for 3 years at a licensed private alarm contracting agency. P.A. 89-85 added language giving partial credit toward the 3-year employment requirement to applicants who have met certain educational requirements. *Church v. State of Illinois*, 164 Ill. 2d 153 (1995).

225 ILCS 455/18. Real Estate License Act of 1983. Provision of predecessor Act (Ill. Rev. Stat. 1981, ch. 111, par. 5732), continued in 1983 Act, that prohibited real estate brokers from offering inducements to potential

customers was unconstitutional as violating free speech guarantees and because it did not advance the State's interest in consumer protection. P.A. 84-1117 deleted the offending provision. *Coldwell Banker Residential Real Estate Services v. Clayton*, 105 Ill. 2d 389 (1985).

LIQUOR

235 ILCS 5/7-9 (Ill. Rev. Stat. 1991, ch. 43, par. 153). **Liquor Control Act of 1934.** In Section concerning appeals from orders of local liquor commissions, provisions denying *de novo* review by the State Commission in the case of appeals from municipalities with a population between 100,000 and 500,000 but requiring *de novo* review in the case of other municipalities violated the Illinois Constitution's prohibition against special legislation. There was no rational basis for the difference in treatment accorded municipalities with a population between 100,000 and 500,000 (of which there were only 2 in the State) and municipalities with a population less than 100,000. P.A. 77-674 deleted the provision denying *de novo* review in the case of appeals from municipalities with a population between 100,000 and 500,000 and provided instead that in the case of appeals from home rule municipalities with a population under 500,000 (rather than municipalities with a population between 100,000 and 500,000) the appeal was limited to a review of the official record of the local proceedings. *Shepard v. Illinois Liquor Control Comm'n*, 43 Ill. 2d 187 (1969).

WAREHOUSES

240 ILCS 40/. Grain Code. Provisions of former Grain Dealers Act (Ill. Rev. Stat. 1987, ch. 111, par. 306) and former Illinois Grain Insurance Act (Ill. Rev. Stat. 1987, ch. 114, par. 704) requiring federally licensed grain warehousemen located in Illinois to either join the Illinois Grain Insurance Fund or provide financial protection for claimants equal to the protection afforded under the Illinois Grain Insurance Act violated the supremacy clause of the U.S. Constitution because they were in conflict with and preempted by the United States Warehouse Act. Subsequently, P.A. 87-262 removed the unconstitutional language from the Grain Dealers Act. Thereafter, both that Act and the Illinois Grain Insurance Act were repealed by P.A. 89-287 and replaced by the Grain Code (under which participation by federal warehousemen in the Illinois Grain Insurance Fund is made permissive under cooperative agreements

that are permitted by federal law). *Demeter, Inc. v. Werries*, 676 F. Supp. 882 (C.D. Ill. 1988).

PUBLIC AID

305 ILCS 5/10-2 (West 1992). **Illinois Public Aid Code.** Provision (i) requiring parents to contribute to the support of a child age 18 through 20 who receives aid and resides with the parents and (ii) exempting parents of a child in the same age group who receives aid but does not live with his or her parents was unconstitutional as a denial of equal protection. The court, while voiding the parental support provision, upheld the remainder of the Section regarding liability for support between spouses and the responsibility for support by other relatives. P.A. 92-876 replaced the provision with the requirement that parents are severally liable for an unemancipated child under age 18, or an unemancipated child age 18 or over who attends high school, until the child is 19 or graduates from high school, whichever is earlier. *Jacobson v. Department of Public Aid*, 171 Ill. 2d 314 (1996).

305 ILCS 5/11-30. Illinois Public Aid Code. Provision that a public aid applicant who received public aid within the previous 12 months in another state in a lower amount than the aid Illinois would provide was ineligible for public aid in Illinois for the first 12 months of residency beyond the amount received in the former state violated the equal protection guarantee of the Fourteenth Amendment of the U.S. Constitution for an aid applicant who had received a lower amount in her former state of Alabama. P.A. 92-111 repealed the provision. *Hicks v. Peters*, 10 F. Supp. 2d 1003 (N.D. Ill. 1998).

PUBLIC HEALTH

410 ILCS 230/4-100 (Ill.Rev.Stat. 1981, ch. 111½, par. 4604-100). **Problem Pregnancy Health Services and Care Act.** Provision prohibiting the Department of Public Health from making grants to nonprofit entities that provide abortion referral or counseling services was unconstitutional: (i) it violated due process because it disqualified entities that agreed not to use the State funds for those particular services and (ii) it violated the First Amendment by imposing a content-based restriction on the information available for a woman's childbirth decision. P.A. 83-51 amended the statute to enable the entities to receive the grants if they did not use the funds for

abortion referral or counseling services. *Planned Parenthood Association v. Kempiners*, 568 F. Supp. 1490 (N.D. Ill. 1983).

ENVIRONMENTAL SAFETY

415 ILCS 5/4 (Ill. Rev. Stat. 1975, ch. 111½, par. 1004). **Environmental Protection Act.** Provision that it was the duty of the EPA to investigate violations of the Act and to prepare and present enforcement actions before the Pollution Control Board violated Article V, Section 15 of the Illinois Constitution, which provides that the Attorney General is “the legal officer of the State” and thus is the only officer empowered to represent the people in any proceeding in which the State is the real party in interest. P.A. 81-219 deleted the offending provision and limited the EPA’s duty to investigating violations of the Act and regulations and issuing administrative citations. *People ex rel. Scott v. Briceland*, 65 Ill. 2d 485 (1976).

415 ILCS 5/25 (Ill. Rev. Stat. 1977, ch. 111½, par. 1025). **Environmental Protection Act.** Provision exempting a motor racing event from noise standards if the event was endorsed by one of several designated private organizations was an unconstitutional delegation of legislative power to a private group. P.A. 82-654 deleted the offending provision. *People v. Pollution Control Board*, 83 Ill. App. 3d 802 (1st Dist. 1980).

415 ILCS 5/33 and 5/42 (Ill. Rev. Stat. 1971, ch. 111½, pars. 1033 and 1042). **Environmental Protection Act.** Provisions allowing the Pollution Control Board to impose money penalties not to exceed \$10,000 for a violation of the Act or regulations or an order of the Board were an unconstitutional delegation of legislative power because the provisions failed to provide the Board with any standards to guide it in imposing penalties. The provisions also were an unconstitutional delegation of judicial power because the Board could impose discretionary fines, a distinctly judicial act. P.A. 78-862 amended the statute to allow the Board to impose “civil penalties” instead of “money penalties”. *Southern Illinois Asphalt Co. v. Environmental Protection Agency*, 15 Ill. App. 3d 66 (5th Dist. 1973).

ROADS AND BRIDGES

605 ILCS 5/9-112 (Ill. Rev. Stat. 1965, ch. 121, par. 9-112). **Illinois Highway Code.** Provision authorizing local authorities to permit advertising on public highways with no guidelines was an unlawful delegation of legislative authority. P.A. 76-793 deleted the provision. *City of Chicago v. Pennsylvania R. Co.*, 41 Ill. 2d 245 (1968).

VEHICLES

625 ILCS 5/. **Illinois Vehicle Code.** Provision in former Uniform Motor Vehicle Anti-theft Act (repealed) providing for an increased registration fee for certain cars purchased in another state was an unconstitutional burden on interstate commerce. Laws 1957, p. 2706 repealed the former Act. *Berger v. Barrett*, 414 Ill. 43 (1953).

625 ILCS 5/4-107 (Ill. Rev. Stat. 1979, ch. 95½, par. 4-107). **Illinois Vehicle Code.** Provision that a vehicle was considered contraband if the vehicle ID number could not be identified was an unconstitutional denial of due process when applied to a buyer who bought a vehicle from a dealer and the title to the vehicle had an ID number that matched the ID number on the dashboard, but the number was false and it was impossible to determine the confidential vehicle ID number. P.A. 83-1473 added an exception for a person who acquires a vehicle without knowledge that the ID number has been removed, altered, or destroyed. *People v. One 1979 Pontiac Grand Prix Automobile*, 89 Ill. 2d 506 (1982).

625 ILCS 5/5-401.2. **Illinois Vehicle Code.** Provision (Ill. Rev. Stat. 1981, ch. 95½, par. 5-401) authorizing warrantless administrative searches of records and business premises of auto parts dealers was unconstitutional because it did not provide for the regularity and neutrality required by the 4th Amendment to the U.S. Constitution. P.A. 83-1473 repealed Section 5-401 of the Code and replaced it with new Section 5-401.2, which does not contain the offending provision. *People v. Krull*, 107 Ill. 2d 107 (1985).

625 ILCS 5/5-401.2 (West 1996). **Illinois Vehicle Code.** Provision that made the knowing failure by certain licensees to maintain records of the

acquisition and disposition of vehicles a Class 2 felony was an unconstitutional violation of due process because the criminalization of an innocent record-keeping error was not a reasonable means of preventing the trafficking of stolen vehicles and parts. P.A. 92-773 reduced the failure to a Class B misdemeanor and made the failure with intent to conceal the identity or origin of a vehicle or its essential parts or with intent to defraud the public in the transfer or sale of vehicles or their essential parts a Class 2 felony. *People v. Wright*, 194 Ill. 2d 1 (2000).

625 ILCS 5/6-107 (Ill. Rev. Stat. 1969, ch. 95½, par. 6-107). **Illinois Vehicle Code.** Provision requiring parent's or guardian's consent for driver's license for an unmarried emancipated minor under age 21 but not for a married emancipated minor under that age was arbitrary discrimination against unmarried emancipated minors. P.A. 77-2805 reduced the age limit to 18 but kept the distinction. Without expressing an opinion as to the validity of the amended provision, the court noted that there may be justifications for applying such a classification to minors under age 18. *People v. Sherman*, 57 Ill. 2d 1 (1974).

625 ILCS 5/6-205 (Ill. Rev. Stat. 1987, ch. 95½, par. 6-205). **Illinois Vehicle Code.** Provision requiring the Secretary of State to revoke a sex offender's driver's license denied the offender due process because there was no relationship to the public interest when a vehicle was not used in the offense. P.A. 85-1259 deleted the offending provision. *People v. Lindner*, 127 Ill. 2d 174 (1989).

625 ILCS 5/6-301.2 (Ill. Rev. Stat. 1991, ch. 95½, par. 6-301.2). **Illinois Vehicle Code.** Provision that punished distribution of a fraudulent driver's license as a Class B misdemeanor but punished the lesser included offense of possessing a fraudulent driver's license as a Class 4 felony violated the Illinois Constitution's due process and proportionality of penalties clauses. P.A. 89-283, effective January 1, 1996, retained the penalties and changed the offense from distributing fraudulent driver's licenses to distributing information about the availability of fraudulent driver's licenses. *People v. McGee*, 257 Ill. App. 3d 229 (1st Dist. 1993).

625 ILCS 5/7-205 (Ill. Rev. Stat. 1970 Supp., ch. 95½, par. 7-205). **Illinois Vehicle Code.** Provision of “Safety Responsibility Law” within the Code that permitted the suspension of a driver’s license without a pre-suspension hearing violated due process. P.A. 77-1910 replaced the offending provision with a requirement that the Secretary of State cause a hearing to be held to determine whether a driver’s license should be suspended. P.A. 83-1081 deleted the requirement that the Secretary of State cause a hearing to be held and instead provided that a driver be given an opportunity to request a hearing before suspension of his or her driver’s license. *Pollion v. Lewis*, 332 F. Supp. 777 (N.D. Ill. 1971).

COURTS

705 ILCS 25/1 (Ill. Rev. Stat., ch. 37, par. 25). **Appellate Court Act.**

705 ILCS 35/2 and 35/2e (repealed) (Ill. Rev. Stat., ch. 37, pars. 72.2 and 72.2e (repealed)). **Circuit Courts Act.**

705 ILCS 40/2 (Ill. Rev. Stat., ch. 37, par. 72.42). **Judicial Vacancies Act.**

705 ILCS 45/2 (Ill. Rev. Stat., ch. 37, par. 160.2). **Associate Judges Act.**

P.A. 86-786 amendatory provisions were unconstitutional because (i) the subdividing of the First Appellate District for judicial elections beyond the divisions made by the Illinois Constitution violated the Constitution and (ii) the subdividing of the Circuit of Cook County, while not unconstitutional by itself, was inseverable from the invalid appellate court provisions. P.A. 86-1478 deleted the offending changes made by P.A. 86-786 and restored the law as it existed before P.A. 86-786, stating that its purpose was to conform the law to the Supreme Court’s opinion. *People ex rel. Chicago Bar Ass’n v. State Bd. of Elections*, 136 Ill. 2d 513 (1990).

705 ILCS 35/2c (Ill. Rev. Stat. 1987, ch. 37, par. 72.2c). **Circuit Courts Act.** Provision requiring a circuit judge to be a resident of a particular county within a (multiple-county) circuit and yet be elected at large from within that circuit violated subsection (a) of Section 7 and Section 11 of Article VI of the Illinois Constitution by creating a hybrid variety judgeship that was not contemplated by the Constitution’s drafters. The Section was amended by P.A. 87-410 to remove the provision in

question, as well as a similar provision relating to the election of judges in another circuit. *Thies v. State Board of Elections*, 124 Ill. 2d 317 (1988).

705 ILCS 105/27.1 and 105/27.2 (Ill. Rev. Stat. 1981, ch. 25, par. 27.1 and Ill. Rev. Stat. 1982 Supp., ch. 25, par. 27.2). **Clerks of Courts Act.** Provisions requiring circuit clerks to collect a special \$5 filing fee from petitioners for dissolution of marriage to fund shelters and services for domestic violence victims unreasonably interfered with persons' access to the courts, was an arbitrary use of the State's police power, and made an unreasonable or arbitrary classification for tax purposes by imposing a tax to fund a general welfare program only on members of a designated class. P.A. 83-1539 deleted the offending provision from Section 27.1, and P.A. 83-1375 deleted the offending provision from Section 27.2. *Crocker v. Finley*, 99 Ill. 2d 444 (1984).

705 ILCS 405/5-33 (repealed) (West 1996). **Juvenile Court Act of 1987.** Act's silence as to a jury trial for a minor at least 13 years old adjudicated delinquent for first degree murder and committed to the Department of Corrections until age 21 without parole for 5 years was an unconstitutional denial of equal protection guarantees as applied to a 13-year-old whose jury trial request was denied. P.A. 90-590 repealed the offending Section and added Section 5-810, which allows a jury trial in certain circumstances. *In re G.O.*, 304 Ill. App. 3d 719 (1st Dist. 1999).

CRIMINAL OFFENSES

720 ILCS 5/11-20.1 (P.A. 88-680). **Criminal Code of 1961.** Provisions amended by P.A. 88-680 were unconstitutional because P.A. 88-680 violated the single-subject rule of Section 8 of Article IV of the Illinois Constitution. P.A. 91-54 re-enacted the changes in Section 11-20.1 made by P.A. 88-680. *People v. Dainty*, 299 Ill. App. 3d 235 (3rd Dist. 1998), *People v. Williams*, 302 Ill. App. 3d 975 (2nd Dist. 1999), and *People v. Edwards*, 304 Ill. App. 3d 250 (2nd Dist. 1999). (These cases are also reported in Part 2 of this Case Report under "Finance", "Courts", "Criminal Offenses", and "Corrections".)

720 ILCS 5/12-18 (Ill. Rev. Stat. 1981, ch. 38, par. 12-18). **Criminal Code of 1961.** Provision that a person may not be charged by his or her spouse with the offense of criminal sexual abuse or aggravated criminal sexual abuse was an unconstitutional violation of equal protection and due process. P.A. 88-421 deleted the offending provision. *People v. M.D.*, 231 Ill. App. 3d 176 (2nd Dist. 1992).

720 ILCS 5/16-1 (Ill. Rev. Stat. 1989, ch. 38, par. 16-1). **Criminal Code of 1961.** Theft provision that prohibited obtaining control over property in custody of law enforcement agency that was explicitly represented as being stolen was unconstitutional on its face because it did not require a culpable mental state. P.A. 89-377 rearranged the list of elements of the offense to make it clear that the offense requires that a person “knowingly” obtain control over the property. *People v. Zaremba*, 158 Ill. 2d 36 (1994).

720 ILCS 5/17B-1, 5/17B-5, 5/17B-10, 5/17B-15, 5/17B-20, 5/17B-25, and 5/17B-30 (P.A. 88-680). **Criminal Code of 1961.** WIC Fraud Article added by P.A. 88-680 was unconstitutional because P.A. 88-680 violated the single-subject rule of Section 8 of Article IV of the Illinois Constitution. P.A. 91-155 re-enacted the WIC Fraud Article of the Code. *People v. Dainty*, 299 Ill. App. 3d 235 (3rd Dist. 1998), *People v. Williams*, 302 Ill. App. 3d 975 (2nd Dist. 1999), and *People v. Edwards*, 304 Ill. App. 3d 250 (2nd Dist. 1999). (These cases are also reported in Part 2 of this Case Report under “Finance”, “Courts”, “Criminal Offenses”, and “Corrections”).

720 ILCS 5/20-1.1 (Ill. Rev. Stat. 1983, ch. 38, par. 20-1.1). **Criminal Code of 1961.**

Item (1) of subsection (a) provided that a person committed aggravated arson when the person knowingly damaged a structure by means of fire or explosive and the person knew or reasonably should have known that someone was present in the structure. This provision was unconstitutional because the underlying conduct that was supposed to be enhanced by the aggravated arson statute was not necessarily criminal in nature. *People v. Johnson*, 114 Ill. 2d 69 (1986).

Item (3) of subsection (a) provided that a person committed aggravated arson when the person damaged a structure by means of fire or explosive and a fireman or policeman was injured. This provision was

unconstitutional because it failed to require a culpable intent. *People v. Wick*, 107 Ill. 2d 62 (1985).

P.A. 84-1100 amended the statute to add “in the course of committing arson” after “A person commits aggravated arson when”, thereby adding the requirement of a criminal purpose or intent.

720 ILCS 5/21.1-2 (Ill. Rev. Stat. 1977, ch. 38, par. 21.1-2). **Criminal Code of 1961.** Provision making peaceful picketing of “a place of employment involved in a labor dispute” exempt from general prohibition against picketing a residence was a denial of equal protection because it accorded preferential treatment to the expression of views on one particular subject: dissemination of information about labor disputes was unrestricted, but discussion of other issues was restricted. P.A. 81-1270 deleted the exception for picketing at “a place of employment involved in a labor dispute”. *Carey v. Brown*, 100 S. Ct. 2286 (1980).

720 ILCS 5/26-1 (Ill. Rev. Stat. 1973, ch. 38, par. 26-1). **Criminal Code of 1961.** Provision that a person commits disorderly conduct when he or she makes a telephone call with the intent to annoy another was impermissibly broad because it applied to any call made with the intent to annoy, including those that might not provoke a breach of the peace. P.A. 80-795 deleted the offending provision. *People v. Klick*, 66 Ill. 2d 269 (1977).

720 ILCS 5/33A-1, 5/33A-2, and 5/33A-3 (P.A. 88-680). **Criminal Code of 1961.** Provisions amended by P.A. 88-680 were unconstitutional because P.A. 88-680 violated the single-subject rule of Section 8 of Article IV of the Illinois Constitution. P.A. 91-404 provided that should P.A. 88-680 be declared unconstitutional as violative of the single-subject rule, it was the General Assembly’s intent that P.A. 91-404 re-enact the changes made by P.A. 88-680 in Article 33A of the Code. *People v. Dainty*, 299 Ill. App. 3d 235 (3rd Dist. 1998), *People v. Williams*, 302 Ill. App. 3d 975 (2nd Dist. 1999), and *People v. Edwards*, 304 Ill. App. 3d 250 (2nd Dist. 1999). (These cases are also reported in Part 2 of this Case Report under “Finance”, “Courts”, “Criminal Offenses”, and “Corrections”).

720 ILCS 5/33A-2 and 5/33A-3 (Ill. Rev. Stat. 1987, ch. 38, pars. 33A-2 and 33A-3). **Criminal Code of 1961.** Penalty for armed violence (a Class X felony) was disproportionate to penalty for aggravated kidnapping other than for ransom under 720 ILCS 5/10-2 (a Class 1 felony) because the elements for both offenses are the same. P.A. 89-707 amended Section 10-2 to provide that aggravated kidnapping, whether or not for ransom, is a Class X felony. *People v. Christy*, 139 Ill. 2d 132 (1990).

720 ILCS 125/2 (West 1996). **Hunter Interference Prohibition Act.** Prohibition against disrupting a person engaged in lawfully taking a wild animal for the purpose of preventing the taking was a content-based regulation of speech in violation of the First Amendment of the United States Constitution. P.A. 90-555 eliminated the offending subsection. *People v. Sanders*, 182 Ill. 2d 524 (1998).

720 ILCS 150/5.1 (West 1992). **Wrongs to Children Act.** Provision creating the offense of permitting the sexual abuse of a child, one element of which was the failure to take reasonable steps to prevent the abuse, violated the due process guarantees of Amendments V and XIV of the U.S. Constitution and Art. I, Sec. 2 of the Illinois Constitution by failing to warn as to what was prohibited and failing to provide clear guidelines for enforcement. P.A.s 89-462 and 91-696 amended the provision to add to the list of persons subject to the statute, to add to the list of acts by which a person committed the offense, and to change the penalty from a Class A misdemeanor to a Class 1 felony. P.A. 92-827 rewrote the entire Section, replacing the offending element with having actual knowledge of and permitting sexual abuse of the child or permitting the child to engage in prostitution. *People v. Maness*, 191 Ill. 2d 478 (2000).

720 ILCS 510/2, 510/3, 510/5, 510/7, 510/8, 510/9, 510/10, and 510/11 (Ill. Rev. Stat. 1976, ch. 38, pars. 81-22, 81-23, 81-25, 81-27, 81-28, 81-29, 81-30, and 81-31). **Illinois Abortion Law of 1975.** Substantial portions of the Act were unconstitutional because they violated the due process clause of the U. S. Constitution. The definition of “criminal abortion” was vague; physicians were not given fair warning of what information they had to provide to pregnant women; spousal and parental consent requirements unduly infringed on a pregnant woman’s rights; the

requirement for additional physician consultations bore no relationship to the needs of the patient or fetus; there was no provision for notice and an opportunity to contest the termination of parental rights; the ban on saline abortions removed a necessary alternative procedure; and required reports of abortions as fetal deaths failed to preserve a woman's right to confidentiality. P.A. 81-1078 made numerous changes in the Act in response to the findings of unconstitutionality. *Wynn v. Carey*, 599 F. 2d 193 (7th Cir. 1979).

720 ILCS 515/3, 515/4, and 515/5 (repealed) (Ill. Rev. Stat. 1978, ch. 38, pars. 81-53, 81-54, and 81-55). **Illinois Abortion Parental Consent Act of 1977**. Provision defining "abortion" was unconstitutionally vague, and criminal penalty provision based on that definition was therefore also unconstitutional. Provision for a 48-hour waiting period and parental consent were unconstitutional violations of the federal equal protection clause because they were underinclusive in that they excluded married minors and overinclusive in that they included mature, emancipated minors. P.A. 89-18 repealed the Illinois Abortion Parental Consent Act of 1977 (as well as the Parental Notice of Abortion Act of 1983) and replaced them with the Parental Notice of Abortion Act of 1995 (750 ILCS 70/), which excludes married or emancipated minors. Enforcement of the 1995 Act is presently restrained by a federal court. *Wynn v. Carey*, 599 F. 2d 193 (7th Cir. 1979).

720 ILCS 520/4 (repealed) (Ill. Rev. Stat., ch. 38, par. 81-64). **Parental Notice of Abortion Act of 1983**. Requirement of a 24-hour waiting period after notifying parent of minor's decision to have an abortion was unconstitutional as unduly burdening the minor's right to an abortion in the absence of a compelling state interest. P.A. 89-18 repealed the Parental Notice of Abortion Act of 1983 (as well as the Illinois Abortion Parental Consent Act of 1977) and replaced them with the Parental Notice of Abortion Act of 1995 (750 ILCS 70/), which provides for a 48-hour waiting period. Enforcement of the 1995 Act is presently restrained by a federal court. *Zbaraz v. Hartigan*, 763 F. 2d 1532 (7th Cir. 1985).

720 ILCS 570/201 (Ill. Rev. Stat. 1973, ch. 56½, par. 1201). **Illinois Controlled Substances Act**. Provision authorizing the Director of Law Enforcement to add or delete substances from the schedules of controlled

substances by issuing rules having the immediate effect of law failed to provide constitutionally required due notice to persons affected by such a rule. P.A. 79-454 added provisions requiring publication of a determination to add or delete a substance, allowing time for filing objections to such a determination, and requiring a hearing before issuance of a rule. *People v. Avery*, 67 Ill. 2d 182 (1977).

720 ILCS 600/2 and 600/3 (Ill. Rev. Stat. 1985, ch. 56½, pars. 2102 and 2103). **Drug Paraphernalia Control Act.** Provisions were unconstitutionally vague because they required scienter on the part of a retailer in the definition Section but allowed for constructive knowledge on the part of the retailer in the penalty Section. P.A. 86-271 amended the penalty Section to delete the constructive knowledge provision. *People v. Monroe*, 118 Ill. 2d 298 (1987).

CRIMINAL PROCEDURE

725 ILCS 5/108-8 (West 1994). **Code of Criminal Procedure of 1963.** Subsection authorizing a “no-knock” search warrant based on the mere existence of firearms on the premises resulted in an unreasonable search and seizure in violation of the United States and Illinois constitutions. P.A. 90-456 amended the Code to base issuance of “no-knock” warrants on the reasonable belief that weapons may be used or evidence may be destroyed if entry is announced. *People v. Wright*, 183 Ill. 2d 16 (1998).

725 ILCS 5/109-3 (Ill. Rev. Stat. 1967, ch. 38, par. 109-3). **Code of Criminal Procedure of 1963.** Provision that an order of suppression of evidence entered at a preliminary hearing was not an appealable order violated provision of Illinois Constitution granting the Supreme Court the power to provide by rule for appeals. P.A. 79-1360 deleted the offending provision. *People v. Taylor*, 50 Ill. 2d 136 (1971).

725 ILCS 5/110-7 (Ill. Rev. Stat. 1971, ch. 38, par. 110-7). **Code of Criminal Procedure of 1963.** Provision that required the cost of appointed legal counsel to be reimbursed from a defendant’s bail deposit violated the due process and equal protection clauses of the U.S. and Illinois constitutions because other defendants who did not post bail were not

required to reimburse the costs of their appointed counsel. P.A. 83-336 removed the provision. *People v. Cook*, 81 Ill. 2d 176 (1980).

725 ILCS 5/115-10 (P.A. 89-428). **Code of Criminal Procedure of 1963.** P.A. 89-428 included a provision amending the Code of Criminal Procedure of 1963 permitting, in a prosecution for a physical or sexual act perpetrated on a child under age 13, the admission of certain out-of-court statements by the child victim. The entire Public Act was unconstitutional because it violated the single-subject requirement of the Illinois Constitution. P.A. 90-786 amended Section 115-10 to allow such statements provided they are made before the victim attains age 13 or within 3 months after commission of the offense, whichever occurs later. *Johnson v. Edgar*, 176 Ill. 2d 499 (1997).

725 ILCS 150/9 (Ill. Rev. Stat. 1991, ch. 56½, par. 1679). **Drug Asset Forfeiture Procedure Act.** Provision depriving a claimant in a forfeiture proceeding of a jury trial was unconstitutional. P.A. 89-404 deleted the language that required forfeiture hearings to be heard by the court without a jury. *People ex rel. O'Malley v. 6323 North LaCrosse Ave.*, 158 Ill. 2d 453 (1994).

CORRECTIONS

730 ILCS 5/. Unified Code of Corrections. Former provision of Code (Ill. Rev. Stat. 1973, ch. 38, par. 1005-2-1) requiring a criminal defendant to bear the burden of proof that he or she was unfit to stand trial was a denial of due process in violation of the Illinois Constitution. P.A. 81-1217 repealed the offending provision. *People v. McCullum*, 66 Ill. 2d 306 (1977).

730 ILCS 5/3-6-3 (P.A. 89-404). **Unified Code of Corrections.** P.A. 89-404, including amendments to the Code's "truth-in-sentencing" provisions, violated the single-subject rule of Section 8 of Article IV of the Illinois Constitution. P.A.'s 89-462, 90-592, and 90-593 re-enacted the Code's "truth-in-sentencing" provisions. *People v. Reedy*, 186 Ill. 2d 1 (1999).

730 ILCS 5/5-4-1 and 5/5-8-1 (Ill. Rev. Stat. 1979, ch. 38, pars. 1005-4-1 and 1005-8-1). **Unified Code of Corrections.** Provisions requiring that in felony cases a trial or sentencing judge "shall specify on the record" or "shall set forth" the reasons for imposing or that led to imposition of the sentence must be construed as permissive or directory and subject to waiver by a defendant who fails to request a statement of reasons for a particular sentence or to object at the sentencing hearing to the omission of such a statement. Were those provisions construed to be mandatory, they would dictate the actual content of a judge's pronouncement of sentence in violation of Article VI, Section 1 and Article II, Section 1 of the Illinois Constitution. *People v. Davis*, 93 Ill. 2d 155 (1982).

730 ILCS 5/5-4-3 (West 1994). **Unified Code of Corrections.** Requirement that an incarcerated sex offender, ordered by the court to provide a blood specimen, must be punished with contempt when the prisoner is deliberately uncooperative violated the separation of powers doctrine of Section 1 of Article II of the Illinois Constitution. P.A. 90-793 punishes the deliberate actions as a Class A misdemeanor. *Murneigh v. Gainer*, 177 Ill. 2d 287 (1997).

730 ILCS 5/5-5-4.1 (Ill. Rev. Stat. 1979, ch. 38, par. 1005-5-4.1). **Unified Code of Corrections.** The statute purported to alter the standard of review of a sentence imposed by a trial judge and authorized a court of review to enter any sentence that the trial judge could have entered. This conflicted with Supreme Court Rule 615(b)(4). The statute was invalid because it constituted an undue infringement by the legislature on the powers of the judiciary. Although the legislature may enact laws governing judicial practice that do not unduly infringe on inherent judicial powers, if a Supreme Court Rule conflicts with a statute, the Rule prevails. Subsequently, P.A. 83-344 removed the offending language. *People v. Cox*, 82 Ill. 2d 268 (1980).

CIVIL PROCEDURE

735 ILCS 5/. Code of Civil Procedure. Provision of "An Act to revise the law in relation to medical practice" (P.A. 79-960; Ill. Rev. Stat. 1975, ch. 70, par. 101) that limited recovery in cases involving injuries

arising from medical, hospital, or other healing art malpractice to \$500,000 permitted or denied recovery on an arbitrary basis, thus granting a special privilege in violation of Article IV, Section 13 of the Illinois Constitution. P.A. 81-288 repealed the offending provision.

Provision of predecessor Act (Ill. Rev. Stat. 1975, ch. 110, pars. 58.2 through 58.10) establishing medical review panels to hear malpractice claims unconstitutionally delegated judicial functions to non-judicial personnel. Provision establishing malpractice claim review procedure as a condition to a jury trial violated the constitutional right to a trial by jury. P.A. 81-288 repealed the offending provisions. *Wright v. Central DuPage Hospital Ass'n*, 63 Ill. 2d 313 (1976). (This case is also reported in this Part 3 of this Case Report under “Insurance”.)

735 ILCS 5/. Code of Civil Procedure. Former provisions of Code (Ill. Rev. Stat. 1985, ch. 110, pars. 2-1012 through 2-1020) requiring, as a prerequisite to trial in a healing art malpractice case, that a panel composed of a circuit judge, a practicing attorney, and a health-care professional convene and make a determination regarding liability and, if liability is found, damages violated the Illinois Constitution’s grant of judicial power solely to the courts because the statute was an attempt by the legislature to create new courts. The offending provisions were repealed by P.A. 86-1028. *Bernier v. Burris*, 113 Ill. 2d 219 (1986).

735 ILCS 5/12-701 (Ill. Rev. Stat. 1991, ch. 110, par. 12-701). **Code of Civil Procedure.** The statute required the court clerk to issue a summons to a person commanding the person to appear in court as a nonwage garnishee after a judgment creditor filed an affidavit. The statute violated due process because it did not require a judgment debtor to be given notice and an opportunity to be heard. P.A. 87-1252 added the requirement that a garnishment notice be provided to the judgment debtor and gave a judgment debtor the right to request a hearing. *E.J. McKernan Co. v. Gregory*, 268 Ill. App. 3d 383 (2nd Dist. 1994); *Jacobson v. Johnson*, 798 F. Supp. 500 (C.D. Ill. 1991).

735 ILCS 5/13-208. Code of Civil Procedure. Pre-Code limitations provision (Ill. Rev. Stat. 1975, ch. 83, par. 19) concerning the effect an absence from the State had on personal actions was an unconstitutional

violation of equal protection guarantees because the statute applied only to Illinois residents. The unconstitutional provision was not continued in the Code of Civil Procedure in 1982. *Haughton v. Haughton*, 76 Ill. 2d 439 (1979).

CIVIL LIABILITIES

740 ILCS 10/. Illinois Antitrust Act. The 1893 antitrust Act was unconstitutional because of a discrimination in favor of agricultural products or livestock in the hands of the producer or raiser exempting them from the prohibition against recovery of the price of articles sold by any trust or combination in restraint of trade or competition in violation of the Act. In 1965, the 1893 Act was repealed by the Illinois Antitrust Act, which did not contain a provision such as that which had been held unconstitutional. *Connolly v. Union Server Pipe Co.*, 22 S. Ct. 431 (1902).

740 ILCS 180/1 and 180/2 (P.A. 89-7). Wrongful Death Act. Provisions amended by P.A. 89-7, a comprehensive revision of the law relating to personal injury actions that was unconstitutional in its entirety, despite inclusion of a severability clause, were inseverable. P.A. 91-380 re-enacted the changes made in the Wrongful Death Act by P.A. 89-7. *Best v. Taylor Machine Works*, 179 Ill. 2d 367 (1997). (This case is also reported in Part 2 of this Case Report under “Civil Procedure” and “Civil Liabilities”, concerning the inseverability of unconstitutional provisions of the Code of Civil Procedure and the Joint Tortfeasor Contribution Act enacted by P.A. 89-7.)

CIVIL IMMUNITIES

745 ILCS 25/3 and 25/4 (Ill. Rev. Stat. 1963, ch. 122, pars. 823 and 824). Tort Liability of Schools Act. Provisions requiring that written notice of injury be filed with the proper school authority within 6 months after the date of the injury and requiring dismissal of an action for failure to file the notice were unconstitutional special legislation. There was no reason why a failure to file such a notice in relation to an injury on school property should bar a recovery while a failure to file such a notice in relation to an injury on property of another governmental unit would not bar a recovery. Enactment of the Local Governmental and Governmental Employees Tort Immunity Act eliminated the discrepancy between notice-of-injury

provisions applicable to various units of local government. *Lorton v. Brown County School Dist.*, 35 Ill. 2d 362 (1966). (See also *Cleary v. Catholic Diocese of Peoria*, 57 Ill. 2d 384 (1974), reported in Part 2 of this Case Report under “Civil Immunities”.)

FAMILIES

750 ILCS 5/203 and 5/208 (Ill. Rev. Stat. 1973, ch. 89, pars. 3, 3.1, and 6). **Illinois Marriage and Dissolution of Marriage Act.** The statute allowed males to marry without parental consent at age 21 and females at age 18. The age requirement for males and females was also different for marriage with parental consent and marriage by court order. This was held to be a violation of Section 18 of Article 1 of the Illinois Constitution prohibiting discrimination on the basis of sex. Subsequently, the statute was amended by P.A. 78-1297 to make the ages the same for males and females. *Phelps v. Bing*, 58 Ill. 2d 32 (1974).

750 ILCS 5/401 (Ill. Rev. Stat. 1977, ch. 40, par. 401). **Illinois Marriage and Dissolution of Marriage Act.** Amendatory language in P.A. 82-197 that retroactively validated all judgments for dissolution of marriage reserving questions of child custody or support, maintenance, or disposition of property, regardless of whether appropriate circumstances existed for the reservation of those questions, violated the separation of powers clause of the Illinois Constitution. The legislature was attempting to retroactively alter or overrule the appellate court’s interpretation of the statute (that is, that appropriate circumstances must exist before a trial court may reserve those questions). The legislature may alter only for future cases the appellate court’s interpretation of statutes. P.A. 83-247 deleted the offending provisions and provided that a trial court may enter a judgment for dissolution of marriage reserving certain issues upon agreement of the parties or upon the motion of either party and a finding by the court that appropriate circumstances exist. *In re Marriage of Cohn*, 93 Ill. 2d 190 (1982).

750 ILCS 5/607 (West 1998). **Illinois Marriage and Dissolution of Marriage Act.** Authorization to grant grandparent visitation when that visitation is in the best interest of the child was unconstitutional as applied to a child both of whose parents objected to grandparent visitation. P.A. 93-911,

effective January 1, 2005, amended the provision to condition the visitation petition upon the parent's unreasonable denial of visitation and to establish a rebuttable presumption that a fit parent's visitation decisions are not harmful to the child's mental, physical, or emotional health. *Lulay v. Lulay*, 193 Ill. 2d 455 (2000).

750 ILCS 5/607 (West 2000). Illinois Marriage and Dissolution of Marriage Act. Paragraphs (1) and (3) of subsection (b), which authorized reasonable visitation to a minor child's grandparents, great-grandparents, or siblings when it is in the child's best interest and (i) the child's parents do not permanently or indefinitely co-habit or (ii) one of the child's parents is dead, violated the Fourteenth Amendment to the United States Constitution by interfering with a parent's fundamental right to determine the care, custody, and control of his or her child. P.A. 93-911, effective January 1, 2005, removed the offending paragraphs and added language to condition the visitation petition upon the parent's unreasonable denial of visitation (and the existence of other factors such as one parent being deceased or parental non-co-habitation) and to establish a rebuttable presumption that a fit parent's visitation decisions are not harmful to the child's mental, physical, or emotional health. *Wickham v. Byrne*, 199 Ill. 2d 309 (2002).

750 ILCS 45/8. Illinois Parentage Act of 1984. Provision of predecessor Paternity Act (Ill. Rev. Stat. 1981, ch. 40, par. 1354) that, with certain exceptions, no action could be brought under the Act later than 2 years after the birth of the child violated the equal protection clause of the 14th Amendment because it did not afford illegitimate children a reasonable opportunity to bring an action and secure child support. P.A. 83-1372 repealed the Paternity Act and replaced it with the Illinois Parentage Act of 1984, which provides that an action under the Act must be brought within 2 years after the child reaches the age of majority. *Jude v. Morrissey*, 117 Ill. App. 3d 782 (1st Dist. 1983).

750 ILCS 45/11. Illinois Parentage Act of 1984. Provisions of predecessor Act on Blood Tests to Determine Paternity and Paternity Act (Ill. Rev. Stat. 1981, ch. 106³/₄, pars. 1, 55, and 56) that contemplated that the decision to submit to a blood test was within a defendant's discretion were an invalid exercise of the legislative power because they conflicted

with a court's power under Supreme Court Rules to order discovery and to compel compliance with discovery orders. P.A. 83-1372 repealed the Paternity Act and replaced it with the Illinois Parentage Act of 1984, which provides that if a party refuses to submit to ordered blood tests, the court may resolve the question of paternity against that party or otherwise enforce its order. *People ex rel. Coleman v. Ely*, 71 Ill. App. 3d 701 (1st Dist. 1979).

750 ILCS 45/. Illinois Parentage Act of 1984.

750 ILCS 50/8 (Ill. Rev. Stat. 1969, ch. 4, par. 9.1-8). **Adoption Act.**

Provision of predecessor to Illinois Parentage Act of 1984 (Paternity Act; Ill. Rev. Stat. 1969, ch. 106³/₄, par. 62) and provision of Adoption Act that (i) denied the putative father of an illegitimate child the custody of his child absent his attempt to legally adopt the child and (ii) allowed an adoption to be finalized without the consent of the father of an illegitimate child were unconstitutional. P.A. 78-854 deleted the offending provision of the Adoption Act, and P.A. 81-290 repealed the offending provision of the Paternity Act. *People ex rel. Slawek v. Covenant Children's Home*, 52 Ill. 2d 20 (1972).

750 ILCS 65/1 (Ill. Rev. Stat. 1980, ch. 40, par. 1001). **Rights of Married Persons Act.** Provision prohibiting a husband or wife from suing the other for a tort to the person committed during the marriage denied equal protection in violation of the 14th Amendment to the U.S. Constitution because it was not rationally related to the purpose of maintaining marital harmony. P.A.'s 82-569, 82-621, 82-783, and 84-1305 amended the offending provision by adding an exception for intentional torts. P.A. 85-625 deleted the exception and provided instead that a husband or wife may sue the other for a tort committed during the marriage. *Moran v. Beyer*, 734 F. 2d 1245 (7th Cir. 1984).

ESTATES

755 ILCS 5/2-2 (West 1994). **Probate Act of 1975.** Provision permitting mothers but not fathers to inherit by intestate succession from their illegitimate children unlawfully discriminated on basis of gender in violation of equal rights clause of Illinois Constitution. P.A. 90-803 changed Section 2-2 to permit eligible parents to inherit by intestate

succession from their illegitimate children; an eligible parent is one who, during the child's lifetime, acknowledged the child, established a parental relationship with the child, and supported the child. *In re Estate of Hicks*, 174 Ill. 2d 433 (1996).

PROPERTY

765 ILCS 705/1. Lessor's Liability Act. Provision in predecessor Act (Ill. Rev. Stat. 1967, ch. 80, par. 15) that prohibited the enforcement of a lease provision that exempted a non-governmental landlord from liability for the landlord's negligence as a violation of public policy was held unconstitutional as special legislation because of the exclusion of governmental landlords. The Act was subsequently replaced with the Lessor's Liability Act, which contained similar provisions but without the governmental exemption. *Sweney Gasoline & Oil Co. v. Toledo P. & W. R. Co.*, 42 Ill. 2d 265 (1969).

765 ILCS 1025/14 and 1025/25 (Ill. Rev. Stat. 1961, ch. 141, pars. 114 and 125). **Uniform Disposition of Unclaimed Property Act.** Provision that required an insurance company to pay to State of Illinois unclaimed amounts payable under insurance policies to persons whose last known address was in Illinois failed to protect the company from multiple payments to other states and denied the company its property without due process. The Act was amended in 1963 to add provisions concerning proceedings in another state with respect to unclaimed property that has been paid or delivered to the State of Illinois. *Metropolitan Life Ins. Co. v. Knight*, 210 F. Supp. 78 (S.D. Ill. 1962).

HUMAN RIGHTS

775 ILCS 5/. Illinois Human Rights Act. Provision of predecessor Act creating a Commission on Human Relations (Ill. Rev. Stat. 1969, ch. 127, par. 214.4-1) required the Commission to cause lists of homeowners in an "area" who did not wish to sell their homes to be mailed to realtors "known or believed" to be soliciting homeowners in that "area". The provision was an unconstitutional delegation of arbitrary powers to an administrative agency because (i) "area" was not defined and no standards were given for the agency to follow in designating "areas" and (ii) no standards were given for establishing a basis on which a "belief" concerning

a realtor's solicitation activities may be formed. P.A. 81-1216 repealed the Act creating a Commission on Human Relations and replaced it with the Illinois Human Rights Act without continuing the offending provision in the new Act. (P.A. 80-920 had previously deleted related provisions, concerning notice from the Human Relations Commission, from what is now the Discrimination in Sale of Real Estate Act, 720 ILCS 590/.) *People v. Tibbitts*, 56 Ill. 2d 56 (1973).

775 ILCS 5/9-102 (Ill. Rev. Stat. 1980 Supp., ch. 68, par. 9-102). **Illinois Human Rights Act.** Provision creating new cause of action for a charge of an unfair employment practice that was properly filed with the Fair Employment Practices Commission prior to March 30, 1978 and that was barred by lapse of time, and not similarly favoring those whose claims were filed after March 30, 1978, violated the special legislation provision of Article IV, Section 13 of the Illinois Constitution and the due process and equal protection clauses of Article I, Section 2 of the Illinois Constitution. P.A. 84-1084 repealed this provision. *Wilson v. All-Steel, Inc.*, 87 Ill. 2d 28 (1981).

BUSINESS ORGANIZATIONS

805 ILCS 5/15.65. Business Corporation Act of 1983. Provision of predecessor Act (Ill. Rev. Stat. 1955, ch. 32, par. 157.138) allowing imposition of franchise tax on foreign corporation authorized to do business in Illinois that was engaged exclusively in interstate business within Illinois violated the commerce clause of the U.S. Constitution. The provision was amended by Laws 1959, p. 25 and Laws 1959, p. 2123 to provide that the franchise tax shall be imposed on a business for the privilege of exercising its authority to transact business in Illinois rather than for simply being authorized to transact business in this State. *Sinclair Pipeline Co. v. Carpentier*, 10 Ill. 2d 295 (1957).

BUSINESS TRANSACTIONS

815 ILCS 350/. Fraudulent Sales Act. Provision of predecessor Act (Smith's Stat. 1931, p. 2602) authorizing municipal clerk to issue a license to hold a sale covered by the Act if the clerk was satisfied from the license application that the proposed sale was of the character the applicant desired to conduct and advertise was an unconstitutional delegation of legislative

power to an administrative official. It did not define or describe the different types of sales designated as requiring a license and gave the clerk unwarranted discretion in determining whether the facts set out in a license application brought the proposed sale within the terms of the statute. The Act was subsequently repealed. The Fraudulent Sales Act specifies the information that must be contained in an application for a license to conduct a sale covered by the Act and provides that the clerk shall issue a license “upon receipt of an application giving fully and completely the [required] information”. *People v. Yonker*, 351 Ill. 139 (1932).

815 ILCS 710/4 and 710/12 (West 1992). **Motor Vehicle Franchise Act.** Provision allowing a court to be the initial arbiter of the propriety of establishing an additional or relocated franchise violated the separation of powers clause of the Illinois Constitution because it delegated to the courts matters that are for legislative or administrative determination. P.A. 89-145 deleted the offending provision. *Fields Jeep-Eagle v. Chrysler Corp.*, 163 Ill. 2d 462 (1994).

EMPLOYMENT

820 ILCS 40/ (Ill. Rev. Stat. 1984 Supp., ch. 48, par. 2001 *et seq.*). **Personnel Record Review Act.** The Act was held unconstitutionally vague because it was not clear with reasonable certainty which records were exempt from inspection by an employee and which records were subject to inspection. The Section concerning records exempt from inspection was subsequently amended by P.A. 85-1393 and P.A. 85-1424 to specify certain employee-related materials. The Attorney General issued an opinion (Ill. Atty. Gen. Op. No. 92-005) that the Act is now constitutional. *Spinelli v. Immanuel Lutheran Evangelical Congregation*, 118 Ill. 2d 389 (1987).

820 ILCS 130/2 and 130/10a (Ill. Rev. Stat. 1961, ch. 48, pars. 39s-2 and 39s-10a). **Prevailing Wage Act.** Provision prohibiting allocation of motor fuel tax funds to public bodies if a certificate of compliance with the Act is not filed by the public body requesting approval of a public works project violated the Illinois Constitution's prohibition against amending a Section of a law (in this case, certain Sections of the Motor Fuel Tax Act and the Illinois Highway Code) without inserting the full text of the Section amended. The Section of the Act containing that provision was

subsequently repealed by Laws 1965, p. 3508. Another Section of the Act extending application of the Act to employees of public bodies when engaged in new construction (as opposed to maintenance work) violated the equal protection clauses of the federal and Illinois constitutions. That and other Sections of the Act were thereafter substantially rewritten to correct the problem. *City of Monmouth v. Lorenz*, 30 Ill. 2d 60 (1963).

820 ILCS 130/2 (Ill. Rev. Stat. 1951, ch. 48, par. 39s-2). **Prevailing Wage Act.** Provision defining the “prevailing rate of wages” in a locality as the wages under a collective bargaining agreement in effect in the locality and covering wages for work of a similar character was an unconstitutional delegation of legislative power to private parties. Laws 1957, p. 2662 deleted the offending provision. *Bradley v. Casey*, 415 Ill. 564 (1953).

CASE INDEX

A

<i>87 So. Rothschild Liquor Mart v. Kozubowski</i> , 752 F. Supp. 839 (N.D. Ill. 1990)	34
<i>1995 Ford Van, People v.</i> 348 Ill. App. 3d 303 (2 nd Dist. 2004)	11
<i>Administrative Office of the Illinois Courts v. State and Municipal Teamsters, Chauffeurs and Helpers Union, Local 726, International Brotherhood of Teamsters, AFL-CIO</i> , 167 Ill. 2d 180 (1995)	23
<i>Allen v. Woodfield Chevrolet, Inc.</i> , 208 Ill. 2d 12 (2003)	19, 56
<i>Alliance for Clean Coal v. Craig</i> , 840 F. Supp. 554 (N.D. Ill. 1993)	32
<i>Almgren v. Rush-Presbyterian-St. Luke's Medical Center</i> , 162 Ill. 2d 205 (1994)	53
<i>Application of the County Collector, In re</i> 281 Ill. App. 3d 467 (2 nd Dist. 1996)	28
<i>Ardt v. Ill. Dept. of Professional Regulation</i> , 154 Ill. 2d 138 (1992)	33
<i>AT&T Communications of Illinois, Inc. v. Illinois Bell Telephone Co.</i> , 349 F. 3d 402 (7th Cir. 2003)	5
<i>Avery, People v.</i> 67 Ill. 2d 182 (1977)	85

B

<i>Baker, People v.</i> 341 Ill. App. 3d 1083 (4 th Dist. 2003)	10, 39
<i>Barbara H., In re</i> 288 Ill. App. 3d 360 (2 nd Dist. 1997)	35
<i>Barbara H., In re</i> 183 Ill. 2d 482 (1998)	35
<i>Barger v. Peters</i> , 163 Ill. 2d 357 (1994)	47
<i>Bates v. Bd. of Education</i> , 136 Ill. 2d 260 (1990)	69
<i>Bd. of Certified Safety Professionals of the Americas, Inc. v. Johnson</i> , 112 Ill. 2d 542 (1986)	65
<i>Beard, People v.</i> 287 Ill. App. 3d 935 (1 st Dist. 1997)	43
<i>Belmont Fire Protection District, In re</i> 111 Ill. 2d 373 (1986)	30
<i>Berger v. Barrett</i> , 414 Ill. 43 (1953)	77
<i>Bernardi v. Leary Construction Co., Inc., People ex rel.</i> 102 Ill. 2d 295 (1984)	27
<i>Bernier v. Burris</i> , 113 Ill. 2d 219 (1986)	88
<i>Best v. Taylor Machine Works</i> , 179 Ill. 2d 367 (1997)	49, 51, 53, 54, 56, 57, 89
<i>Board of Education of Gardner School District v. County Board of School Trustees of Peoria County</i> , 28 Ill. 2d 15 (1963)	69

<i>Board of Jr. College District 504 v. Carey</i> , 43 Ill. 2d 82 (1969).....	65
<i>Bossie, People v.</i> 108 Ill. 2d 236 (1985).....	36
<i>Bowes v. Howlett</i> , 24 Ill.2d 545 (1962).....	62
<i>Boynton v. Kusper</i> , 112 Ill. 2d 356 (1986).....	67
<i>Bradley v. Casey</i> , 415 Ill. 564 (1953).....	96
<i>Burdunice, People v.</i> 211 Ill. 2d 264 (2004).....	23, 42, 47
C	
<i>C.R.H., In re</i> 163 Ill. 2d 263 (1994).....	38
<i>Cannon v. Edgar</i> , 33 F. 3d 880 (7 th Cir. 1994).....	57
<i>Cardinal Savings & Loan Ass'n v. Kramer</i> , 99 Ill. 2d 334 (1984).....	66
<i>Carey v. Brown</i> , 100 S. Ct. 2286 (1980).....	82
<i>Carey v. Strayhorn, People ex rel.</i> 61 Ill. 2d 85 (1975).....	45
<i>Caterpillar Inc. v. Lyons</i> , 318 F. Supp. 2d 703 (C.D. Ill. 2004).....	20
<i>Cecrle v. Educational Facilities Authority</i> , 52 Ill. 2d 312 (1972).....	70
<i>Central Illinois Light Co. v. Citizens Utility Bd.</i> , 827 F. 2d 1169 (7 th Cir. 1987).....	72
<i>Central Television Service v. Isaacs</i> , 27 Ill. 2d 420 (1963).....	63
<i>Cervantes, People v.</i> 189 Ill. 2d 80 (1999).....	27, 38, 40, 48
<i>Charles v. Daley</i> , 749 F. 2d 452 (7 th Cir. 1984).....	44
<i>Chicago Bar Ass'n v. State Bd. of Elections, People ex rel.</i> 136 Ill. 2d 513 (1990).....	60, 79
<i>Chicago, Milwaukee and St. Paul Railway Co., People v.</i> 306 Ill. 486 (1923).....	61
<i>Christopher K., In re</i> 348 Ill. App. 3d 130 (1 st Dist. 2004).....	9
<i>Christy, People v.</i> 139 Ill. 2d 132 (1990).....	83
<i>Church v. State of Illinois</i> , 164 Ill. 2d 153 (1995).....	73
<i>Cincinnati Insurance Co. v. Chapman</i> , 181 Ill. 2d 65 (1997).....	23, 37, 38
<i>City of Carbondale v. Van Natta</i> , 61 Ill. 2d 483 (1975).....	30
<i>City of Chicago v. Holland</i> , 206 Ill. 2d 480 (2003).....	4, 26
<i>City of Chicago v. Pennsylvania R. Co.</i> , 41 Ill. 2d 245 (1968).....	77
<i>City of Monmouth v. Lorenz</i> , 30 Ill. 2d 60 (1963).....	96

<i>City of Urbana v. Houser</i> , 67 Ill.2d 268 (1977)	68
<i>City Savings Association v. International Guaranty and Insurance Co.</i> , 17 Ill. 2d 609 (1959)	31
<i>Cleary v. Catholic Diocese of Peoria</i> , 57 Ill. 2d 384 (1974)	54, 90
<i>Club Misty, Inc. v. Laski</i> , 208 F. 3d 615 (7 th Cir. 2000)	35
<i>Coldwell Banker Residential Real Estate Services v. Clayton</i> , 105 Ill. 2d 389 (1985)	74
<i>Coleman v. Ely, People ex rel.</i> 71 Ill. App. 3d 701 (1 st Dist. 1979)	92
<i>Collins v. Board of Trustees of Firemen's Annuity and Benefit Fund of Chicago</i> , 226 Ill. App. 3d 316 (1 st Dist. 1992)	65
<i>Commonwealth Edison Co. v. International Brotherhood of Electrical Workers</i> , 961 F. Supp. 1169 (N.D. Ill. 1997)	56
<i>Communist Party of Illinois v. Ogilvie</i> , 357 F. Supp. 105 (N.D. Ill. 1972)	24
<i>Connolly v. Union Server Pipe Co.</i> , 22 S. Ct. 431 (1902)	89
<i>Consumers Gas Co. v. Ill. Commerce Comm.</i> , 144 Ill. App. 3d 229 (5 th Dist. 1986)	32
<i>Contest of Election for Governor, In re</i> 93 Ill. 2d 463 (1983)	62
<i>Cook, People v.</i> 81 Ill. 2d 176 (1980)	86
<i>Cox, People v.</i> 82 Ill. 2d 268 (1980)	87
<i>Crocker v. Finley</i> , 99 Ill. 2d 444 (1984)	80

D

<i>D.D.H., In re</i> 319 Ill. App. 3d 989 (5 th Dist. 2001)	38
<i>D.F., In re</i> 208 Ill. 2d 223 (2003)	18
<i>Dainty, People v.</i> 299 Ill. App. 3d 235 (3 rd Dist. 1998)	27, 38, 40, 48, 50, 80, 81, 82
<i>Davis, People v.</i> 93 Ill. 2d 155 (1982)	48, 87
<i>Davis, People v.</i> 177 Ill. 2d 495 (1997)	35, 42, 48
<i>DeBruyn v. Elrod</i> , 84 Ill. 2d 128 (1981)	66
<i>Demeter, Inc. v. Werries</i> , 676 F. Supp. 882 (C.D. Ill. 1988)	75
<i>Department of Revenue of Montana v. Kurth</i> , 114 S. Ct. 1937 (1994)	28

E

<i>E.J. McKernan Co. v. Gregory</i> , 268 Ill. App. 3d 383 (2 nd Dist. 1994)	88
<i>East Side Levee and Sanitary District v. Madison County Levee and Sanitary District, People ex rel.</i> 54 Ill. 442 (1973)	68
<i>East St. Louis Federation of Teachers v. East St. Louis School District</i> , 178 Ill. 2d 399 (1997)	30

<i>Edwards, People v.</i>	
304 Ill. App. 3d 250 (2 nd Dist. 1999).....	27, 38, 40, 48, 50, 80, 81, 82
<i>Elliot v. Board of Education of the City of Chicago,</i>	
64 Ill. App. 3d 229 (1 st Dist. 1978).....	69
<i>Estate of Hicks, In re</i>	
174 Ill. 2d 433 (1996).....	93

F

<i>Federated Distributors, Inc. v. Johnson,</i>	
125 Ill. 2d 1 (1988).....	34
<i>Feinglass v. Reinecke,</i>	
48 F. Supp. 438 (N.D. Ill. 1942).....	24
<i>Felt v. Board of Trustees of Judges Retirement System,</i>	
107 Ill. 2d 158 (1985).....	66
<i>Fields Jeep-Eagle v. Chrysler Corp.,</i>	
163 Ill. 2d 462 (1994).....	95
<i>Figura v. Cummins,</i>	
4 Ill. 2d 44 (1954).....	57
<i>Fiorito v. Jones,</i>	
39 Ill. 2d 531 (1968).....	64
<i>Flynn v. Kucharski,</i>	
45 Ill. 2d 211 (1970).....	29
<i>Foster v. Kusper,</i>	
587 F. Supp. 1194 (N.D. Ill. 1984).....	61
<i>Foster, People v.</i>	
316 Ill. App. 3d 855 (4 th Dist. 2000).....	23
<i>Fumarolo v. Chicago Board of Education,</i>	
142 Ill. 2d 54 (1990).....	70

G

<i>G.O., In re</i>	
304 Ill. App. 3d 719 (1 st Dist. 1999).....	80
<i>General Electric Co., People of the State of Illinois v.</i>	
683 F. 2d 206 (7 th Cir. 1982).....	35
<i>General Order of March 15, 1993, In re</i>	
258 Ill. App. 3d 13 (1 st Dist. 1993).....	38
<i>George D. Hardin, Inc. v. Village of Mt. Prospect,</i>	
99 Ill. 2d 96 (1983).....	28
<i>Gholson v. Engle,</i>	
9 Ill. 2d 454 (1956).....	73
<i>Gjersten v. Board of Election Commissioners for the City of Chicago,</i>	
791 F. 2d 472 (7 th Cir. 1986).....	24
<i>Grace v. Howlett,</i>	
51 Ill. 2d 478 (1972).....	72

H

<i>H.G., In re</i>	
197 Ill. 2d 317 (2001).....	55
<i>Hamm, People v.</i>	
149 Ill. 2d 201 (1992).....	36
<i>Hammond v. Illinois State Board of Education,</i>	
624 F. Supp. 1151 (S.D. Ill. 1986).....	31
<i>Haughton v. Haughton,</i>	
76 Ill. 2d 439 (1979).....	89
<i>Haymes v. Catholic Bishop of Chicago,</i>	
41 Ill. 2d 336 (1968).....	54

<i>Hicks v. Peters</i> , 10 F. Supp. 2d 1003 (N.D. Ill. 1998).....	75
<i>Holland Coal Co. v. Isaacs, People ex rel.</i> 22 Ill. 2d 477 (1961)	63
<i>Hutchings v. Kraject</i> , 34 Ill. 2d 379 (1966)	67

I

<i>In re Application of the County Collector</i> , 281 Ill. App. 3d 467 (2 nd Dist. 1996)	28
<i>In re Barbara H.</i> , 288 Ill. App. 3d 360 (2 nd Dist. 1997)	35
<i>In re Barbara H.</i> , 183 Ill. 2d 482 (1998)	35
<i>In re Belmont Fire Protection District</i> , 111 Ill. 2d 373 (1986)	30
<i>In re C.R.H.</i> , 163 Ill. 2d 263 (1994)	38
<i>In re Christopher K.</i> , 348 Ill. App. 3d 130 (1 st Dist. 2004)	9
<i>In re Contest of Election for Governor</i> , 93 Ill. 2d 463 (1983)	62
<i>In re D.D.H.</i> , 319 Ill. App. 3d 989 (5 th Dist. 2001)	38
<i>In re D.F.</i> , 208 Ill. 2d 223 (2003)	18
<i>In re Estate of Hicks</i> , 174 Ill. 2d 433 (1996)	93
<i>In re G.O.</i> , 304 Ill. App. 3d 719 (1 st Dist. 1999)	80
<i>In re General Order of March 15, 1993</i> , 258 Ill. App. 3d 13 (1 st Dist. 1993)	38
<i>In re H.G.</i> , 197 Ill. 2d 317 (2001)	55
<i>In re K.C.</i> , 186 Ill. 2d 542 (1999)	36
<i>In re Kazi, Bkrcty</i> , 125 B.R. 981 (S.D. Ill. 1991)	52
<i>In re Marriage of Cohn</i> , 93 Ill. 2d 190 (1982)	90
<i>In re Marriage of Peters-Farrell</i> , 345 Ill. App. 3d 603 (1 st Dist. 2003)	15
<i>In re Petition of Sanjuan-Moeller</i> , 343 Ill. App. 3d 202 (2 nd Dist. 2003)	15, 52
<i>In re Petition of Village of Vernon Hills</i> , 168 Ill. 2d 117 (1995)	30
<i>In re Timothy T.</i> , 343 Ill. App. 3d 1260 (4 th Dist. 2003)	9
<i>International College of Surgeons v. Brenza</i> , 8 Ill. 2d 141 (1956)	65
<i>Isaacs v. Johnson, People ex rel.</i> 26 Ill. 2d 268 (1962)	64

J

<i>Jacobson v. Department of Public Aid</i> , 171 Ill. 2d 314 (1996)	75
---	----

<i>Jacobson v. Johnson</i> , 798 F. Supp. 500 (C.D. Ill. 1991)	88
<i>Johnkol, Inc. v. License Appeal Commission</i> , 42 Ill. 2d 377 (1969)	34
<i>Johnson v. Daley</i> , 403 Ill. 338 (1949)	64
<i>Johnson v. Edgar</i> , 176 Ill. 2d 499 (1997)	86
<i>Johnson, People v.</i> 114 Ill. 2d 69 (1986)	81
<i>Jorgensen v. Blagojevich</i> , 211 Ill. 2d 286 (2004)	3, 26
<i>Joseph, People v.</i> 113 Ill. 2d 36 (1986)	46
<i>Jude v. Morrissey</i> , 117 Ill. App. 3d 782 (1 st Dist. 1983)	91

K

<i>K.C., In re</i> 186 Ill. 2d 542 (1999)	36
<i>Kazi, Bkrtcy, In re</i> 125 B.R. 981 (S.D. Ill. 1991)	52
<i>King v. Senior Services Associates, Inc.</i> , 341 Ill. App. 3d 264 (2 nd Dist. 2003)	6
<i>Klick, People v.</i> 66 Ill. 2d 269 (1977)	82
<i>Knoll Pharmaceutical Co. v. Sherman</i> , 57 F. Supp. 2d 615 (N.D. Ill. 1999)	44
<i>Kohn v. Mucia</i> , 776 F. Supp. 348 (N.D. Ill. 1991)	37
<i>Krull, People v.</i> 107 Ill. 2d 107 (1985)	77
<i>Kunkel v. Walton</i> , 179 Ill. 2d 519 (1997)	51
<i>Kush v. Wentworth</i> , 339 Ill. App. 3d 157 (2 nd Dist. 2003)	16
<i>Kusper v. Pontikes</i> , 94 S. Ct. 303 (1973)	24

L

<i>Lacny v. Police Board of the City of Chicago</i> , 291 Ill. App. 3d 397 (1 st Dist. 1997)	51
<i>Landry v. Daley</i> , 280 F. Supp. 938 (N.D. Ill. 1968)	42
<i>Lawlor v. Chicago Board of Election Com'rs</i> , 395 F. Supp. 692 (N.D. Ill. 1975)	60
<i>Lee v. John Deere Insurance Company</i> , 208 Ill. 2d 38 (2003)	4
<i>Lewis, People v.</i> 175 Ill. 2d 412 (1996)	43
<i>Lindner, People v.</i> 127 Ill. 2d 174 (1989)	78
<i>Lombardi, People v.</i> 184 Ill. 2d 462 (1998)	41, 50
<i>Lorton v. Brown County School Dist.</i> , 35 Ill. 2d 362 (1966)	54, 90

M

<i>M.D., People v.</i>	
231 Ill. App. 3d 176 (2 nd Dist. 1992).....	81
<i>Madigan v. Dixon-Marquette Cement, Inc.,</i>	
343 Ill. App. 3d 163 (2 nd Dist. 2003)	6
<i>Madigan v. Snyder, People ex rel.</i>	
208 Ill. 2d 457 (2004)	14
<i>Marriage of Cohn, In re</i>	
93 Ill. 2d 190 (1982)	90
<i>Marriage of Peters-Farrell, In re</i>	
345 Ill. App. 3d 603 (1 st Dist. 2003)	15
<i>Masterson, People v.</i>	
207 Ill. 2d 305 (2003)	13
<i>McAlpine v. Dimick,</i>	
326 Ill. 2d 40 (1927)	60
<i>McClanahan, People v.</i>	
191 Ill. 2d 127 (2000)	46
<i>McCullum, People v.</i>	
66 Ill. 2d 306 (1977)	86
<i>McDougall v. Lueder,</i>	
389 Ill. 141 (1945)	71
<i>McGee, People v.</i>	
257 Ill. App. 3d 229 (1 st Dist. 1993)	78
<i>McWhorter, People v.</i>	
113 Ill. 2d 374 (1986)	56
<i>Melvin v. City of West Frankfort,</i>	
93 Ill. App. 3d 425 (5 th Dist. 1981)	29
<i>Messenger v. Edgar,</i>	
157 Ill. 2d 162 (1993)	55
<i>Metropolitan Life Ins. Co. v. Knight,</i>	
210 F. Supp. 78 (S.D. Ill. 1962)	93
<i>Metzger v. DaRosa,</i>	
209 Ill. 2d 30 (2004)	2
<i>Metzl v. Leininger,</i>	
57 F. 3d 618 (7 th Cir. 1995)	31
<i>Miles, People v.</i>	
344 Ill. App. 3d 315 (2 nd Dist. 2003)	12, 43
<i>Monroe, People v.</i>	
118 Ill. 2d 298 (1987)	85
<i>Moran v. Beyer,</i>	
734 F. 2d 1245 (7 th Cir. 1984)	92
<i>Morey v. Doud,</i>	
77 S. Ct. 1344 (1957)	70
<i>Morris, People v.</i>	
136 Ill. 2d 157 (1990)	37
<i>Morrison, People v.</i>	
223 Ill. App. 3d 176 (3 rd Dist. 1991)	40
<i>Moss, People v.</i>	
206 Ill. 2d 503 (2003)	10, 39, 41, 42
<i>Murneigh v. Gainer,</i>	
177 Ill. 2d 287 (1997)	87
<i>Murphy, People v.</i>	
261 Ill. App. 3d 1019 (2 nd Dist. 1994)	43

N

<i>National Commercial Banking Corp. of Australia v. Harris</i> , 125 Ill. 2d 448 (1988)	71
<i>Netsch v. Lewis</i> , 344 F. Supp. 1280 (N.D. Ill. 1972)	61
<i>Norman v. Reed</i> , 112 S. Ct. 698 (1992).....	25
<i>Northwest Diversified, Inc. v. Mauer</i> , 341 Ill. App 3d 27 (1 st Dist. 2003)	14

O

<i>O'Malley v. 6323 North LaCrosse Ave., People ex rel.</i> 158 Ill. 2d 453 (1994)	86
<i>One 1979 Pontiac Grand Prix Automobile, People v.</i> 89 Ill. 2d 506 (1982)	77

P

<i>Pearson v. Edgar</i> , 153 F. 3d 397 (7 th Cir. 1998)	44
<i>People ex rel. Bernardi v. Leary Construction Co., Inc.</i> , 102 Ill. 2d 295 (1984)	27
<i>People ex rel. Carey v. Strayhorn</i> , 61 Ill. 2d 85 (1975)	45
<i>People ex rel. Chicago Bar Ass'n v. State Bd. of Elections</i> , 136 Ill. 2d 513 (1990)	60, 79
<i>People ex rel. Coleman v. Ely</i> , 71 Ill. App. 3d 701 (1 st Dist. 1979)	92
<i>People ex rel. East Side Levee and Sanitary District v. Madison County Levee and Sanitary District</i> , 54 Ill. 442 (1973)	68
<i>People ex rel. Holland Coal Co. v. Isaacs</i> , 22 Ill. 2d 477 (1961)	63
<i>People ex rel. Isaacs v. Johnson</i> , 26 Ill. 2d 268 (1962)	64
<i>People ex rel. Madigan v. Snyder</i> , 208 Ill. 2d 457 (2004)	14
<i>People ex rel. O'Malley v. 6323 North LaCrosse Ave.</i> , 158 Ill. 2d 453 (1994)	86
<i>People ex rel. Rudman v. Rini</i> , 64 Ill. 2d 321 (1976)	62, 66
<i>People ex rel. Scott v. Briceland</i> , 65 Ill. 2d 485 (1976)	76
<i>People ex rel. Slawek v. Covenant Children's Home</i> , 52 Ill. 2d 20 (1972)	92
<i>People of the State of Illinois v. General Electric Co.</i> , 683 F. 2d 206 (7 th Cir. 1982)	35
<i>People v. 1995 Ford Van</i> , 348 Ill. App. 3d 303 (2 nd Dist. 2004)	11
<i>People v. Avery</i> , 67 Ill. 2d 182 (1977)	85
<i>People v. Baker</i> , 341 Ill. App. 3d 1083 (4 th Dist. 2003)	10, 39
<i>People v. Beard</i> , 287 Ill. App. 3d 935 (1 st Dist. 1997)	43

<i>People v. Bossie</i> , 108 Ill. 2d 236 (1985)	36
<i>People v. Burdunice</i> , 211 Ill. 2d 264 (2004)	23, 42, 47
<i>People v. Cervantes</i> , 189 Ill. 2d 80 (1999)	27, 38, 40, 48
<i>People v. Chicago, Milwaukee and St. Paul Railway Co.</i> , 306 Ill. 486 (1923)	61
<i>People v. Christy</i> , 139 Ill. 2d 132 (1990)	83
<i>People v. Cook</i> , 81 Ill. 2d 176 (1980)	86
<i>People v. Cox</i> , 82 Ill. 2d 268 (1980)	87
<i>People v. Dainty</i> , 299 Ill. App. 3d 235 (3 rd Dist. 1998)	27, 38, 40, 48, 50, 80, 81, 82
<i>People v. Davis</i> , 93 Ill. 2d 155 (1982)	48, 87
<i>People v. Davis</i> , 177 Ill. 2d 495 (1997)	35, 42, 48
<i>People v. Edwards</i> , 304 Ill. App. 3d 250 (2 nd Dist. 1999)	27, 38, 40, 48, 50, 80, 81, 82
<i>People v. Foster</i> , 316 Ill. App. 3d 855 (4 th Dist. 2000)	23
<i>People v. Hamm</i> , 149 Ill. 2d 201 (1992)	36
<i>People v. Johnson</i> , 114 Ill. 2d 69 (1986)	81
<i>People v. Joseph</i> , 113 Ill. 2d 36 (1986)	46
<i>People v. Klick</i> , 66 Ill. 2d 269 (1977)	82
<i>People v. Krull</i> , 107 Ill. 2d 107 (1985)	77
<i>People v. Lewis</i> , 175 Ill. 2d 412 (1996)	43
<i>People v. Lindner</i> , 127 Ill. 2d 174 (1989)	78
<i>People v. Lombardi</i> , 184 Ill. 2d 462 (1998)	41, 50
<i>People v. M.D.</i> , 231 Ill. App. 3d 176 (2 nd Dist. 1992)	81
<i>People v. Masterson</i> , 207 Ill. 2d 305 (2003)	13
<i>People v. McClanahan</i> , 191 Ill. 2d 127 (2000)	46
<i>People v. McCullum</i> , 66 Ill. 2d 306 (1977)	86
<i>People v. McGee</i> , 257 Ill. App. 3d 229 (1 st Dist. 1993)	78
<i>People v. McWhorter</i> , 113 Ill. 2d 374 (1986)	56
<i>People v. Miles</i> , 344 Ill. App. 3d 315 (2 nd Dist. 2003)	12, 43
<i>People v. Monroe</i> , 118 Ill. 2d 298 (1987)	85

<i>People v. Morris</i> , 136 Ill. 2d 157 (1990)	37
<i>People v. Morrison</i> , 223 Ill. App. 3d 176 (3 rd Dist. 1991)	40
<i>People v. Moss</i> , 206 Ill. 2d 503 (2003)	10, 39, 41, 42
<i>People v. Murphy</i> , 261 Ill. App. 3d 1019 (2 nd Dist. 1994)	43
<i>People v. One 1979 Pontiac Grand Prix Automobile</i> , 89 Ill. 2d 506 (1982)	77
<i>People v. Pizano</i> , 347 Ill. App. 3d 128 (1 st Dist. 2004)	2, 25
<i>People v. Pollution Control Board</i> , 83 Ill. App. 3d 802 (1 st Dist. 1980)	76
<i>People v. Rodriguez</i> , 339 Ill. App. 3d 677 (2 nd Dist. 2003)	8
<i>People v. Sanders</i> , 182 Ill. 2d 524 (1998)	83
<i>People v. Sequoia Books, Inc.</i> , 127 Ill. 2d 271 (1989)	43
<i>People v. Sherman</i> , 57 Ill. 2d 1 (1974)	78
<i>People v. Shumpert</i> , 126 Ill. 2d 344 (1989)	39
<i>People v. Stroud</i> , 208 Ill. 2d 398 (2004)	13, 45
<i>People v. Tarkowski</i> , 100 Ill. App. 3d 153 (2 nd Dist. 1981)	49
<i>People v. Taylor</i> , 344 Ill. App. 3d 929 (1 st Dist. 2003)	11, 41
<i>People v. Taylor</i> , 50 Ill. 2d 136 (1971)	85
<i>People v. Tibbitts</i> , 56 Ill. 2d 56 (1973)	94
<i>People v. Warren</i> , 173 Ill. 2d 348 (1996)	40
<i>People v. Watts</i> , 181 Ill. 2d 133 (1998)	56
<i>People v. White</i> , 116 Ill. 2d 171 (1987)	62
<i>People v. Wick</i> , 107 Ill. 2d 62 (1985)	82
<i>People v. Williams</i> , 302 Ill. App. 3d 975 (2 nd Dist. 1999)	27, 38, 40, 80, 82
<i>People v. Williams</i> , 143 Ill. 2d 477 (1991)	45
<i>People v. Wooters</i> , 188 Ill. 2d 500 (1999)	29, 37
<i>People v. Wright</i> , 183 Ill. 2d 16 (1998)	85
<i>People v. Wright</i> , 194 Ill. 2d 1 (2000)	78
<i>People v. Yonker</i> , 351 Ill. 139 (1932)	95
<i>People v. Zaremba</i> , 158 Ill. 2d 36 (1994)	81

<i>Petition of Sanjuan-Moeller, In re</i> 343 Ill. App. 3d 202 (2 nd Dist. 2003).....	15, 52
<i>Petition of Village of Vernon Hills, In re</i> 168 Ill. 2d 117 (1995).....	30
<i>Phelps v. Bing,</i> 58 Ill. 2d 32 (1974).....	90
<i>Philip v. Daley,</i> 339 Ill. App. 3d 274 (2 nd Dist. 2003).....	7
<i>Pizano, People v.</i> 347 Ill. App. 3d 128 (1 st Dist. 2004).....	2, 25
<i>Planned Parenthood Association v. Kempiners,</i> 568 F. Supp. 1490 (N.D. Ill. 1983).....	76
<i>Pollion v. Lewis,</i> 332 F. Supp. 777 (N.D. Ill. 1971).....	79
<i>Pollution Control Board, People v.</i> 83 Ill. App. 3d 802 (1 st Dist. 1980).....	76
<i>Primeco Personal Communications, L. P. v. Illinois Commerce Commission,</i> 196 Ill. 2d 70 (2001).....	28
<i>Prudential Property & Casualty Insurance Co. v. Scott,</i> 161 Ill. App. 3d 372 (4 th Dist. 1987).....	32

R

<i>Rock v. Burris,</i> 139 Ill. 2d 494 (1990).....	26
<i>Rodriguez, People v.</i> 339 Ill. App. 3d 677 (2 nd Dist. 2003).....	8
<i>Rudman v. Rini, People ex rel.</i> 64 Ill. 2d 321 (1976).....	62, 66
<i>Russell Stewart Oil Co. v. State,</i> 124 Ill. 2d 116 (1988).....	63

S

<i>Safeguard Insurance v. Selcke,</i> 179 Ill. 2d 94 (1997).....	71
<i>Sanders, People v.</i> 182 Ill. 2d 524 (1998).....	83
<i>Scott v. Briceland, People ex rel.</i> 65 Ill. 2d 485 (1976).....	76
<i>Searle Pharmaceuticals, Inc. v. Department of Revenue,</i> 117 Ill. 2d 454 (1987).....	27
<i>Sepmeyer v. Holman,</i> 162 Ill. 2d 249 (1994).....	52
<i>Sequoia Books, Inc., People v.</i> 127 Ill. 2d 271 (1989).....	43
<i>Shepard v. Illinois Liquor Control Comm'n,</i> 43 Ill. 2d 187 (1969).....	74
<i>Sherman, People v.</i> 57 Ill. 2d 1 (1974).....	78
<i>Shumpert, People v.</i> 126 Ill. 2d 344 (1989).....	39
<i>Sinclair Pipeline Co. v. Carpentier,</i> 10 Ill. 2d 295 (1957).....	94
<i>Slawek v. Covenant Children's Home, People ex rel.</i> 52 Ill. 2d 20 (1972).....	92
<i>Smith v. Board of Election Commissioners of the City of Chicago,</i> 587 F. Supp. 1136 (N.D. Ill. 1984).....	24

<i>Socialist Workers Party v. Chicago Board of Election Commissioners</i> , 99 S. Ct. 983 (1977)	61
<i>Southern Illinois Asphalt Co. v. Environmental Protection Agency</i> , 15 Ill. App. 3d 66 (5 th Dist. 1973)	76
<i>Sperling v. County Officers Electoral Board</i> , 57 Ill. 2d 81 (1974)	60
<i>Spinelli v. Immanuel Lutheran Evangelical Congregation</i> , 118 Ill. 2d 389 (1987)	95
<i>Springfield Rare Coin Gallery v. Johnson</i> , 115 Ill. 2d 221 (1986)	63
<i>Stawski Distributing Co., Inc. v. Browary Zywiec S.A.</i> , 349 F. 3d 1023 (7 th Cir. 2003)	20
<i>Stein v. Howlett</i> , 52 Ill. 2d 570 (1972)	59
<i>Stroud, People v.</i> 208 Ill. 2d 398 (2004)	13, 45
<i>Suwanski v. Village of Lombard</i> , 342 Ill. App. 3d 248 (2 nd Dist. 2003)	16
<i>Sweney Gasoline & Oil Co. v. Toledo P. & W. R. Co.</i> , 42 Ill. 2d 265 (1969)	93

T

<i>Tarkowski, People v.</i> 100 Ill. App. 3d 153 (2 nd Dist. 1981)	49
<i>Taylor, People v.</i> 344 Ill. App. 3d 929 (1 st Dist. 2003)	11, 41
<i>Taylor, People v.</i> 50 Ill. 2d 136 (1971)	85
<i>Thies v. State Board of Elections</i> , 124 Ill. 2d 317 (1988)	80
<i>Tibbitts, People v.</i> 56 Ill. 2d 56 (1973)	94
<i>Timothy T., In re</i> 343 Ill. App. 3d 1260 (4 th Dist. 2003)	9
<i>Treece v. Shawnee Community School District</i> , 39 Ill. 2d 136 (1968)	54
<i>Tsatsos v. Zollar</i> , 943 F. Supp. 945 (N.D. Ill. 1996)	73
<i>Tully v. Edgar</i> , 171 Ill. 2d 297 (1996)	31

U

<i>U.S. ex rel. Holder v. Circuit Court of the 17th Judicial Circuit</i> , 624 F. Supp. 68 (N.D. Ill. 1985)	41
<i>United Church of the Medical Center v. Medical Center Commission</i> , 689 F. 2d 693 (7 th Cir. 1982)	68

W

<i>Walker v. State Board of Elections</i> , 65 Ill. 2d 543 (1976)	59
<i>Wardius v. Oregon</i> , 412 U.S. 470 (1973)	45
<i>Warren, People v.</i> 173 Ill. 2d 348 (1996)	40
<i>Watts, People v.</i> 181 Ill. 2d 133 (1998)	56

<i>Weksler v. Collins</i> , 317 Ill. 132 (1925).....	37
<i>Welton v. Hamilton</i> , 344 Ill. 82 (1931)	67
<i>White, People v.</i> 116 Ill. 2d 171 (1987).....	62
<i>Wick, People v.</i> 107 Ill. 2d 62 (1985)	82
<i>Williams v. Ill. State Scholarship Comm'n</i> , 139 Ill. 2d 24 (1990)	70
<i>Williams, People v.</i> 302 Ill. App. 3d 975 (2 nd Dist. 1999).....	27, 38, 40, 80, 82
<i>Williams, People v.</i> 143 Ill. 2d 477 (1991)	45
<i>Wilson v. All-Steel, Inc.</i> , 87 Ill. 2d 28 (1981)	94
<i>Wooters, People v.</i> 188 Ill. 2d 500 (1999)	29, 37
<i>Wright v. Central DuPage Hospital Ass'n</i> , 63 Ill. 2d 313 (1976)	71, 88
<i>Wright, People v.</i> 183 Ill. 2d 16 (1998)	85
<i>Wright, People v.</i> 194 Ill. 2d 1 (2000)	78
<i>Wynn v. Carey</i> , 599 F. 2d 193 (7 th Cir. 1979)	84

Y

<i>Yonker, People v.</i> 351 Ill. 139 (1932)	95
<i>Youakim v. McDonald</i> , 71 F. 3d 1274 (7 th Cir. 1995).....	26
<i>Youakim v. Miller</i> , 431 F. Supp. 40 (N.D. Ill. 1976)	26, 33

Z

<i>Zaabel v. Konetski</i> , 209 Ill. 2d 127 (2004)	17
<i>Zaremba, People v.</i> 158 Ill. 2d 36 (1994)	81
<i>Zbaraz v. Hartigan</i> , 763 F. 2d 1532 (7 th Cir. 1985).....	84

ACT INDEX

A

Adoption Act.....	18, 55, 92
Appellate Court Act	38, 79
Associate Judges Act.....	79
Attorney Act	38

B

Beer Industry Fair Dealing Act	20
Burial Rights Act	56
Business Corporation Act of 1983.....	94

C

Cannabis and Controlled Substances Tax Act	28
Child Care Act of 1969.....	25, 32
Children and Family Services Act.....	25
Cigarette Tax Act	64
Circuit Courts Act	79
Citizens Utility Board Act	72
Clerks of Courts Act.....	80
Code of Civil Procedure	8, 14, 15, 51, 52, 87, 88
Code of Criminal Procedure of 1963	13, 44, 45, 46, 85, 86
Collective Bargaining Successor Employer Act.....	56
Compensation Review Act	3, 26
Consumer Fraud and Deceptive Business Practices Act	19, 55, 56
Counties Code.....	29, 66, 67
Criminal Code of 1961	10, 11, 12, 39, 40, 41, 42, 43, 80, 81, 82, 83
Currency Exchange Act	70, 71

D

Discrimination in Sale of Real Estate Act	44
Drug Asset Forfeiture Procedure Act.....	86
Drug Paraphernalia Control Act	85

E

Elder Abuse and Neglect Act	6
Election Code	23, 24, 25, 59, 60, 61, 62
Employment of Strikebreakers Act	20
Environmental Protection Act	6, 76
Equine Activity Liability Act	16

F

Fire Protection District Act.....	30
Firearm Owners Identification Card Act.....	35
Fish and Aquatic Life Code.....	36
Foreign Banking Office Act	71
Fraudulent Sales Act.....	94
Funeral Directors and Embalmers Licensing Code	72

G

General Assembly Compensation Act.....	26
Grain Code	74

H

Higher Education Student Assistance Act	70
Home Repair Fraud Act	56
Hunter Interference Prohibition Act	83

I

Illinois Abortion Law of 1975	43, 83
Illinois Abortion Parental Consent Act of 1977	84
Illinois Aeronautics Act	7
Illinois Antitrust Act	89
Illinois Controlled Substances Act	44, 84
Illinois Credit Card and Debit Card Act	12, 43
Illinois Dental Practice Act	33
Illinois Development Finance Authority Act	62
Illinois Educational Facilities Authority Act	70
Illinois Governmental Ethics Act	59
Illinois Highway Code	77
Illinois Human Rights Act	93, 94
Illinois Identification Card Act	2, 25
Illinois Income Tax Act	27
Illinois Insurance Code	5, 32, 71, 72
Illinois Marriage and Dissolution of Marriage Act	55, 90, 91
Illinois Municipal Code	29, 67
Illinois Parentage Act of 1984	91, 92
Illinois Pension Code	28, 65
Illinois Podiatric Medical Practice Act of 1987	73
Illinois Public Aid Code	75
Illinois Public Demonstrations Law	35
Illinois Public Labor Relations Act	23
Illinois Savings and Loan Act	31
Illinois State Auditing Act	4, 26
Illinois Vehicle Code	8, 11, 36, 37, 77, 78, 79
Industrial Home Work Act	57

J

Joint Tortfeasor Contribution Act	53
Judicial Redistricting Act of 1997	37
Judicial Vacancies Act	79
Juvenile Court Act of 1987	9, 38, 80

L

Lessor's Liability Act	93
Liquor Control Act of 1934	33, 34, 74
Local Governmental and Governmental Employees Tort Immunity Act	16, 54

M

Medical Center District Act	68
Medical Practice Act of 1987	33
Mental Health and Developmental Disabilities Code	35
Mental Health and Developmental Disabilities Confidentiality Act	15, 53
Motor Vehicle Franchise Act	95

P

Parental Notice of Abortion Act of 1983	84
Partial-birth Abortion Ban Act	44
Personnel Code	2

Personnel Record Review Act.....	95
Premises Liability Act.....	53
Prevailing Wage Act.....	95, 96
Private Correctional Facility Moratorium Act.....	50
Private Detective, Private Alarm, Private Security, and Locksmith Act of 1993	73
Probate Act of 1975.....	92
Problem Pregnancy Health Services and Care Act.....	75
Property Tax Code	27, 28, 64, 65
Public Utilities Act.....	5, 32
Public Works Preference Act	27

R

Real Estate License Act of 1983.....	73
Retailers' Occupation Tax Act.....	63, 64
Rights of Married Persons Act	92

S

Sanitary District Act of 1907.....	68
School Code	30, 31, 68, 69
Secure Residential Youth Care Facilities Licensing Act.....	50
Service Occupation Tax Act.....	64
Service Use Tax Act.....	63
Sexually Dangerous Persons Act.....	13
Sexually Violent Persons Commitment Act.....	14, 46
Spent Nuclear Fuel Act	35
State Employee Indemnification Act.....	23
State Finance Act	27

T

Telecommunications Municipal Infrastructure Maintenance Fee Act	28
Tort Liability of Schools Act.....	54, 89
Township Code.....	29

U

Unemployment Insurance Act.....	57
Unified Code of Corrections.....	14, 47, 48, 49, 50, 86, 87
Uniform Disposition of Unclaimed Property Act.....	93
Uniform Interstate Family Support Act.....	17
University of Illinois Trustees Act.....	31
Use Tax Act.....	62, 63

V

Violent Crime Victims Assistance Act	47
--	----

W

Workers' Compensation Act	57
Workers' Occupational Diseases Act	57
Wrongful Death Act	89
Wrongs to Children Act	83

STATUTE AND CONSTITUTIONAL PROVISION INDEX

STATUTES

5 ILCS 315/.....	23
5 ILCS 350/2.....	23
5 ILCS 420/4A-106.....	59
10 ILCS 5/1A-3.....	59
10 ILCS 5/1A-5.....	59
10 ILCS 5/1A-7.1.....	59
10 ILCS 5/2A-1.....	23
10 ILCS 5/2A-9.....	23
10 ILCS 5/7-5.....	59
10 ILCS 5/7-10.....	23, 60
10 ILCS 5/7-10.1.....	24
10 ILCS 5/7-12.....	59
10 ILCS 5/7-42.....	60
10 ILCS 5/7-43.....	24
10 ILCS 5/7-59.....	60
10 ILCS 5/8-10.....	61
10 ILCS 5/10-2.....	24
10 ILCS 5/10-3.....	61
10 ILCS 5/10-5.....	25
10 ILCS 5/17-15.....	61
10 ILCS 5/23-1.4.....	61
10 ILCS 5/23-1.10.....	61
10 ILCS 5/25-11.....	62
10 ILCS 5/29-14.....	62
15 ILCS 335/14B.....	2, 25
20 ILCS 415/19c.1.....	2
20 ILCS 505/5.....	25
20 ILCS 3505/.....	62
25 ILCS 115/1.....	26
25 ILCS 120/5.5.....	3, 26
30 ILCS 5/3-1.....	4, 26
30 ILCS 105/5.400.....	27
30 ILCS 560/.....	27
35 ILCS 5/203.....	27
35 ILCS 105/2.....	62
35 ILCS 105/3-5.....	63
35 ILCS 105/3-40.....	63
35 ILCS 110/2.....	63
35 ILCS 115/2.....	64
35 ILCS 120/1.....	63
35 ILCS 120/5a.....	64
35 ILCS 120/5b.....	64
35 ILCS 120/5c.....	64
35 ILCS 130/1.....	64
35 ILCS 200/9-185.....	64
35 ILCS 200/15-85.....	65
35 ILCS 200/20-180.....	27
35 ILCS 200/20-185.....	27
35 ILCS 200/22-45.....	28

35 ILCS 520/.....	28
35 ILCS 635/20.....	28
40 ILCS 5/5-128	28
40 ILCS 5/5-167.1.....	28
40 ILCS 5/6-210.1.....	65
40 ILCS 5/18-125.....	65
55 ILCS 5/4-5001.....	66
55 ILCS 5/4-12001.....	66
55 ILCS 5/4-12003.....	66
55 ILCS 5/5-1002.....	67
55 ILCS 5/5-1120.....	29
60 ILCS 1/65-35.....	29
65 ILCS 5/10-2.1-6	29
65 ILCS 5/11-13-1.....	29
65 ILCS 5/11-13-3.....	67
70 ILCS 705/14.14.....	30
70 ILCS 705/19a.....	30
70 ILCS 915/6.....	68
70 ILCS 2205/1	68
70 ILCS 2205/5	68
70 ILCS 2205/7	68
70 ILCS 2205/8	68
70 ILCS 2205/17	68
70 ILCS 2205/27b	68
70 ILCS 2205/27c	68
70 ILCS 2205/27d	68
70 ILCS 2205/27e	68
70 ILCS 2205/27f.....	68
70 ILCS 2205/27g	68
105 ILCS 5/1B-20	30
105 ILCS 5/3-1.....	31
105 ILCS 5/7-7.....	68
105 ILCS 5/14-7.02.....	69
105 ILCS 5/17-2.11a	69
105 ILCS 5/24-2	31
105 ILCS 5/Art. 34.....	69
110 ILCS 310/1.....	31
110 ILCS 947/105	70
110 ILCS 1015/17	70
205 ILCS 105/1-6.....	31
205 ILCS 105/1-10.10	31
205 ILCS 405/1.....	70
205 ILCS 405/4	71
205 ILCS 645/3	71
215 ILCS 5/.....	71
215 ILCS 5/143.01	32
215 ILCS 5/143a-2	5
215 ILCS 5/409	71
215 ILCS 5/Art. XXXV	72
220 ILCS 5/8-402.1.....	32
220 ILCS 5/10-201.....	32
220 ILCS 5/13-408	5
220 ILCS 5/13-409	5
220 ILCS 10/9	72
225 ILCS 10/2.05	25, 32
225 ILCS 10/2.17	25, 32

225 ILCS 25/31.....	33
225 ILCS 41/.....	72
225 ILCS 60/26.....	33
225 ILCS 100/21.....	73
225 ILCS 446/75.....	73
225 ILCS 455/18.....	73
235 ILCS 5/6-16.....	33
235 ILCS 5/7-5.....	33
235 ILCS 5/7-9.....	33, 74
235 ILCS 5/8-1.....	34
235 ILCS 5/9-2.....	34
240 ILCS 40/.....	74
305 ILCS 5/10-2.....	75
305 ILCS 5/11-30.....	75
320 ILCS 20/4.1.....	6
405 ILCS 5/3-806.....	35
410 ILCS 230/4-100.....	75
415 ILCS 5/4.....	76
415 ILCS 5/21.....	6
415 ILCS 5/25.....	76
415 ILCS 5/33.....	76
415 ILCS 5/42.....	76
420 ILCS 15/.....	35
430 ILCS 65/2.....	35
430 ILCS 70/.....	35
515 ILCS 5/5-25.....	36
605 ILCS 5/9-112.....	77
620 ILCS 5/47.....	7
625 ILCS 5/.....	77
625 ILCS 5/2-118.1.....	8
625 ILCS 5/4-102.....	36
625 ILCS 5/4-103.2.....	36
625 ILCS 5/4-104.....	36
625 ILCS 5/4-107.....	77
625 ILCS 5/4-209.....	37
625 ILCS 5/5-401.2.....	77
625 ILCS 5/6-107.....	78
625 ILCS 5/6-205.....	78
625 ILCS 5/6-208.1.....	37
625 ILCS 5/6-301.2.....	78
625 ILCS 5/7-205.....	79
625 ILCS 5/8-105.....	37
625 ILCS 5/11-501.....	11, 37
625 ILCS 5/11-501.1.....	8
705 ILCS 5/5-805.....	9
705 ILCS 5/31A-1.2.....	42
705 ILCS 21/.....	37
705 ILCS 25/1.....	38, 79
705 ILCS 35/2.....	79
705 ILCS 35/2c.....	79
705 ILCS 35/2e.....	79
705 ILCS 40/2.....	79
705 ILCS 45/2.....	79
705 ILCS 105/27.1.....	80
705 ILCS 105/27.2.....	80
705 ILCS 205/6.....	38

705 ILCS 405/1-15.....	38
705 ILCS 405/2-21.....	9
705 ILCS 405/2-28.....	38
705 ILCS 405/5-4.....	38
705 ILCS 405/5-14.....	38
705 ILCS 405/5-19.....	38
705 ILCS 405/5-23.....	38
705 ILCS 405/5-33.....	38, 80
705 ILCS 405/5-34.....	38
705 ILCS 405/5-810.....	9
720 ILCS 5/8-4.....	39
720 ILCS 5/9-1.....	39
720 ILCS 5/10-2.....	10, 11, 39
720 ILCS 5/10-5.....	39
720 ILCS 5/10-5.5.....	40
720 ILCS 5/11-6.....	40
720 ILCS 5/11-6.5.....	40
720 ILCS 5/11-20.1.....	40, 80
720 ILCS 5/12-1.2.....	40
720 ILCS 5/12-4.2.....	11
720 ILCS 5/12-6.....	41
720 ILCS 5/12-11.....	41
720 ILCS 5/12-18.....	81
720 ILCS 5/16A-4.....	11, 41
720 ILCS 5/16-1.....	81
720 ILCS 5/17B-1.....	81
720 ILCS 5/17B-5.....	81
720 ILCS 5/17B-10.....	81
720 ILCS 5/17B-15.....	81
720 ILCS 5/17B-20.....	81
720 ILCS 5/17B-25.....	81
720 ILCS 5/17B-30.....	81
720 ILCS 5/18-2.....	11, 41
720 ILCS 5/18-4.....	11, 42
720 ILCS 5/19-3.....	41
720 ILCS 5/20-1.1.....	81
720 ILCS 5/21.1-2.....	82
720 ILCS 5/24-1.1.....	42
720 ILCS 5/24-1.2.....	11
720 ILCS 5/24-3.1.....	40
720 ILCS 5/25-1.....	42
720 ILCS 5/26-1.....	82
720 ILCS 5/31A-1.1.....	42
720 ILCS 5/32-10.....	40
720 ILCS 5/Art. 33A.....	10
720 ILCS 5/33A-1.....	41, 82
720 ILCS 5/33A-2.....	41, 42, 82
720 ILCS 5/33A-3.....	41, 42, 82, 83
720 ILCS 5/36-1.....	12
720 ILCS 5/37-4.....	43
720 ILCS 125/2.....	83
720 ILCS 150/5.1.....	83
720 ILCS 250/16.....	12, 43
720 ILCS 510/2.....	43, 83
720 ILCS 510/3.....	83
720 ILCS 510/5.....	83

720 ILCS 510/7	83
720 ILCS 510/8	83
720 ILCS 510/9	83
720 ILCS 510/10	83
720 ILCS 510/11	43, 83
720 ILCS 513/10	44
720 ILCS 515/3	84
720 ILCS 515/4	84
720 ILCS 515/5	84
720 ILCS 520/4	84
720 ILCS 570/201	84
720 ILCS 570/315	44
720 ILCS 590/1	44
720 ILCS 600/2	85
720 ILCS 600/3	85
725 ILCS 5/106D-1	13, 44
725 ILCS 5/108-8	85
725 ILCS 5/109-3	85
725 ILCS 5/110-4	45
725 ILCS 5/110-6.2	45
725 ILCS 5/110-7	85
725 ILCS 5/114-9	45
725 ILCS 5/115-10	86
725 ILCS 5/115-15	46
725 ILCS 5/122-8	46
725 ILCS 150/9	86
725 ILCS 205/1.01	13
725 ILCS 207/	14
725 ILCS 207/30	46
725 ILCS 207/65	46
725 ILCS 240/10	47
730 ILCS 5/	86
730 ILCS 5/3-3-13	14
730 ILCS 5/3-6-3	47, 86
730 ILCS 5/3-7-2	47
730 ILCS 5/3-10-11	48
730 ILCS 5/5-4-1	48, 87
730 ILCS 5/5-4-3	87
730 ILCS 5/5-5-3	47, 48
730 ILCS 5/5-5-3.2	48
730 ILCS 5/5-5-4.1	87
730 ILCS 5/5-5-6	49
730 ILCS 5/5-5-7	49
730 ILCS 5/5-6-3	47
730 ILCS 5/5-6-3.1	47, 49
730 ILCS 5/5-7-1	47
730 ILCS 5/5-8-1	48, 49, 87
730 ILCS 140/3	50
730 ILCS 175/	50
735 ILCS 5/	87, 88
735 ILCS 5/2-402	51
735 ILCS 5/2-604.1	51
735 ILCS 5/2-621	51
735 ILCS 5/2-622	51
735 ILCS 5/2-623	51
735 ILCS 5/2-624	51

735 ILCS 5/2-1003.....	51
735 ILCS 5/2-1107.1.....	51
735 ILCS 5/2-1109.....	51
735 ILCS 5/2-1115.05.....	51
735 ILCS 5/2-1115.1.....	51
735 ILCS 5/2-1115.2.....	51
735 ILCS 5/2-1116.....	51
735 ILCS 5/2-1117.....	51
735 ILCS 5/2-1205.1.....	51
735 ILCS 5/2-1702.....	51
735 ILCS 5/2-2101.....	51
735 ILCS 5/2-2102.....	51
735 ILCS 5/2-2103.....	51
735 ILCS 5/2-2104.....	51
735 ILCS 5/2-2105.....	51
735 ILCS 5/2-2106.....	51
735 ILCS 5/2-2106.5.....	51
735 ILCS 5/2-2107.....	51
735 ILCS 5/2-2108.....	51
735 ILCS 5/2-2109.....	51
735 ILCS 5/3-103.....	51
735 ILCS 5/8-802.....	51
735 ILCS 5/8-2001.....	51
735 ILCS 5/8-2003.....	51
735 ILCS 5/8-2004.....	51
735 ILCS 5/8-2501.....	51
735 ILCS 5/12-701.....	88
735 ILCS 5/12-911.....	14
735 ILCS 5/12-1006.....	52
735 ILCS 5/13-202.1.....	52
735 ILCS 5/13-208.....	88
735 ILCS 5/13-213.....	51
735 ILCS 5/13-214.3.....	51
735 ILCS 5/13-217.....	8, 51
735 ILCS 5/15-1508.....	52
735 ILCS 5/15-1701.....	52
735 ILCS 5/20-104.....	52
735 ILCS 5/21-103.....	15, 52
740 ILCS 10/.....	89
740 ILCS 100/3.5.....	53
740 ILCS 100/4.....	53
740 ILCS 100/5.....	53
740 ILCS 110/2.....	15
740 ILCS 110/9.....	53
740 ILCS 110/10.....	15, 53
740 ILCS 130/2.....	53
740 ILCS 130/3.....	53
740 ILCS 180/1.....	89
740 ILCS 180/2.....	89
745 ILCS 10/2-202.....	16
745 ILCS 10/6A-101.....	54
745 ILCS 10/6A-105.....	54
745 ILCS 25/2.....	54
745 ILCS 25/3.....	54, 89
745 ILCS 25/4.....	54, 89
745 ILCS 25/5.....	54

745 ILCS 47/15	17
745 ILCS 47/20	17
750 ILCS 5/203	90
750 ILCS 5/208	90
750 ILCS 5/401	90
750 ILCS 5/501.1	55
750 ILCS 5/607	90, 91
750 ILCS 22/205	17
750 ILCS 45/	92
750 ILCS 45/8	91
750 ILCS 45/11	91
750 ILCS 50/1	18, 55
750 ILCS 50/8	92
750 ILCS 65/1	92
755 ILCS 5/2-2	92
765 ILCS 705/1	93
765 ILCS 1025/14	93
765 ILCS 1025/25	93
775 ILCS 5/	93
775 ILCS 5/9-102	94
805 ILCS 5/15.65	94
815 ILCS 350/	94
815 ILCS 505/4	55
815 ILCS 505/10a	19, 56
815 ILCS 505/10b	56
815 ILCS 515/3	56
815 ILCS 710/4	95
815 ILCS 710/12	95
815 ILCS 720/5	20
820 ILCS 10/1	56
820 ILCS 30/	20
820 ILCS 40/	95
820 ILCS 130/2	95, 96
820 ILCS 130/10a	95
820 ILCS 135/2.1	56
820 ILCS 135/2.2	56
820 ILCS 240/2	57
820 ILCS 305/5	57
820 ILCS 310/5	57
820 ILCS 405/602	57

CONSTITUTIONAL PROVISIONS

ILCON Art. I, Sec. 8	13
ILCON Art. I, Sec. 11	2, 10, 11
ILCON Art. II, Sec. 1	4
ILCON Art. IV, Sec. 13	19
ILCON Art. V, Sec. 12	14
ILCON Art. VI, Sec. 14	3
ILCON Art. VIII, Sec. 3	4